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No. 380

In the Supreme Court of the United States

OCTOBER TERM, 1939

ALFRED A. MAURER AND MARCUS W. MYERS, TRADING AS MAURER & MYERS AUTO CONVOY, APPELLANTS

v.

WILLIAM J. HAMILTON, JR., SECRETARY OF REVENUE OF THE COMMONWEALTH OF PENNSYLVANIA, ET AL.

ON APPEAL FROM THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION AS AMICI CURIAE

INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statutes and regulations involved	3
Statement	3
Interest of the United States and the Interstate Commerce Commission	9
Summary of argument	10
Argument:	
A. The Motor Carrier Act, 1935, authorizes the Commission to occupy the field of regulating safety of equipment	12
B. The Commission has occupied the field of regulating safety of equipment	28
C. The Regulations of the Commission are valid as applied to car-over-cab equipment	38
Conclusion	41
Appendix A	43
Appendix B	54

CITATIONS

Cases:	
Barnwell Bros. v. South Carolina State Highway Dept., 17 F. Supp. 803	38
Erie R. R. Co. v. New York, 233 U. S. 671	28, 41
Gilvary v. Cuyahoga Valley Ry. Co., 292 U. S. 57	41
Louisville & Nashville R. Co. v. State, 16 Ala. App. 199	40
Mulford v. Smith, 307 U. S. 38	41
Napier v. Atlantic Coast Line R. Co., 272 U. S. 605	17, 27, 40
Northern Pacific Ry. Co. v. Washington, 222 U. S. 370	28, 41
Oregon-Washington R. & N. Co. v. Washington, 270 U. S. 87	41
Pennsylvania Railroad Company v. Public Service Commission, 250 U. S. 566	28
Prigg v. Pennsylvania, 16 Pet. 539	41
South Carolina State Highway Dept. v. Barnwell Bros., 303 U. S. 177	25
Southern Ry. Co. v. R. R. Commission of Indiana, 236 U. S. 439	28, 41

Cases—Continued. Page

Staten Island Rapid Transit Co. v. Public Service Commission, 16 F. (2d) 313 41

The Minnesota Rate Cases, 230 U. S. 352 41

The Shreveport Case (Houston & Texas Ry. v. United States), 234 U. S. 342 41

University Overland Express, Inc. v. Alsop, 122 Conn. 275; 189 Atl. 458 24

University Overland Express, Inc. v. Griffin, 89 N. H. 395, 200 Atl. 390 25

Welch Co. v. New Hampshire, 306 U. S. 79 24

Whish v. Public Service Commission, 205 App. Div. 756; 240 N. Y. 677 40

Statutes:

Interstate Commerce Act, as amended (c. 382, sec. 4, 25 Stat. 859), Section 14 ..... 8, 44

Interstate Commerce Act, as amended, Part II, Motor Carrier Act, 1935 (c. 498, 49 Stat. 543):

Section 202 ..... 13, 15, 18, 42, 43

Section 203 20

Section 204 ..... 8, 9, 13, 15, 17, 20, 28, 43, 44

Section 205 18

Section 225 ..... 14, 15, 16, 21, 44

Locomotive Boiler Inspection Act, Feb. 17, 1911, c. 103, 36 Stat. 913, as amended March 4, 1915, c. 169, 38 Stat. 1192, and June 7, 1924, c. 355, 43 Stat. 659 27

Pennsylvania Laws, Sec. 1033 (c) of the Act of June 29, 1937 (75 P. S. 642), as amended Sept. 1, 1939 ..... 2, 3, 7, 45

The Vehicle Code, Act of May 1, 1929, P. L. 905, as amended June 29, 1937, P. L. 2329:

Section 902 45

Section 903 48

Miscellaneous:

79 Cong. Rec. 1420, *et seq* 12, 20, 21, 22, 23

Ex Parte No. MC-4, *Motor Carrier Safety Regulations*, 1 M. C. C. 1 5

In re Car Over Cab Operations, 12 M. C. C. 127 ..... 6, 7, 10, 11, 33, 53

Interstate Commerce Commission:

Coordination of Motor Transportation, 182 I. C. C. 263 (1932) 12

Fifty-second Annual Report, p. 89 10

Fifty-third Annual Report, p. 110 10

Motor Bus and Motor Truck Operations, 140 I. C. C. 685 (1928) 12

Kauper, Paul G., *Federal Regulation of Motor Carriers* (1934), 33 Mich. L. Rev. 1, 239 12

National Conference on Street and Highway Safety, Uniform Act Regulating Traffic on Highways (Dept. of Agriculture, Bureau of Public Roads, 1930), Arts. XVI, XVIII 19

Miscellaneous—Continued. Page

Proposed Safety Regulations of the Interstate Commerce Commission Applicable to Motor Carriers Subject to the Motor Carrier Act, 1935 29

Sen. Doc. No. 89, 74th Cong., 1st Sess., *Report of the Federal Coordinator of Transportation, 1934* 12

Sen. Doc. No. 152, 73d Cong., 2d Sess., *Regulation of Transportation Agencies* 12, 18, 27

S. 1629, Sen. Rep. No. 482, 74th Cong., 1st Sess., p. 1, *Report of Committee on Interstate and Foreign Commerce* 20

Stecher, K., *Proposed Federal Regulation of Interstate Carriers by Motor Vehicle* (1932), 17 Minn. L. Rev. 1 12

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OPINIONS BELOW

The opinion of the Court of Common Pleas of Dauphin County, Pennsylvania (R. 479a–498a), is reported in 45 Dauphin County Reporter 341. The opinion of the Supreme Court of Pennsylvania (R. 679–694) is reported in 336 Pa. 17.

JURISDICTION

The opinion and decree of the Supreme Court of Pennsylvania were filed July 3, 1939 (R. 679–694). The appeal to this Court was allowed on August

16, 1939 (R. 697). The jurisdictional statement was filed by appellants on September 12, 1939, as required by Rule 12. The Court on November 6, 1939, ordered "that further consideration of the question of the jurisdiction of this court in this case is postponed to the hearing of the case on the merits."

There may be a question whether this case is moot. Section 1033 (c) of the Pennsylvania Vehicle Code (Act No. 447, 1937 P. L. 2329, 2401, 75 P. S. 643), the enforcement of which appellants seek to enjoin, was amended, on June 27, 1939, effective September 1, 1939 (R. 693). The Pennsylvania Supreme Court expressed the opinion, however, that the amendment "has not modified the effect of this Section" (R. 693). We have, of course, no interest in the outcome of this particular case except so far as its decision touches upon the general questions discussed in this brief. We therefore leave all questions of jurisdiction to the parties.

QUESTIONS PRESENTED

1. Whether the statutes of Pennsylvania prohibiting the operation on its highways by common and contract carriers of vehicles engaged in car-over-cab transportation in interstate commerce are in conflict with rules and regulations lawfully issued by the Interstate Commerce Commission pursuant to Section 204 (a) (1) and (2) of the Motor Carrier Act, 1935.

2. Whether the Motor Carrier Act, 1935, and the effective rules and regulations of the Commission have occupied the field of regulating safety of equipment so as to render invalid the challenged application of the Pennsylvania statutes.[1]

STATUTES AND REGULATIONS INVOLVED

The pertinent regulations and reports of the Interstate Commerce Commission and the applicable statutes are set forth in Appendices A and B, *infra*, pp. 42–61.

STATEMENT

This suit was commenced August 4, 1937, in the Court of Common Pleas of Dauphin County, Pennsylvania, by appellants, trading as Maurer & Myers Auto Convoy, a Pennsylvania partnership (R. 679–680, 26a). It sought to enjoin as unconstitutional the threatened enforcement of Section 1033 (c) of the Pennsylvania Vehicle Code, effective June 29, 1937,[2] which provides as follows (R. 680, 28a–29a):

> No person shall operate a vehicle on the highways of this Commonwealth carrying any other vehicle, any part of which is above the cab of the carrier vehicle or over the head of the operator of such carrier vehicle.

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[1] The Commission does not here contest the power of the State to enforce its statutes in the absence of action by the Commission pursuant to authority conferred by Congress in the Motor Carrier Act, 1935. In this case, the Commission has acted.

[2] Act No. 447, 1937 P. L. 2329, 2401, 75 P. S. 642.

A preliminary injunction was awarded on August 4, 1937, and thereafter the proceeding came on for final hearing on November 8, 1937 (R. 9a–10a, 17a).[3] M. & G. Convoy, Inc., a New York corporation, and John G. Reeser, a resident of Pennsylvania, filed similar bills, and a number of owners and operators intervened in the proceeding instituted by M. & G. Convoy, Inc.; thereafter, the three cases were consolidated and tried together (R. 680, 18a–19a).

In support of their application for an injunction appellants alleged, and introduced evidence tending to prove, the following:

Appellants since April 1930 have engaged as common carriers in the business of transporting new automobiles upon specially constructed tractors and trailers almost wholly in interstate commerce (R. 680, 4a; see R. 36, 37, 49, 86, 91, 92, 111, 115, 157–161, 199, 207, 209). Each of thirty-one vehicles (10 owned and 21 upon lease) used in the operations is so constructed that a portion of one of the transported vehicles extends over the cab of the carrier vehicle (R. 680, 482a, 4a). These vehicles were registered in Pennsylvania and the fees required for the year 1937 were paid (R. 27a–28a). The replacement value of such equipment

[3] The original appellees admitted that they threatened to enforce the provisions of Section 1033 (c) against appellants and that they instituted prosecutions generally throughout the Commonwealth (R. 680, 481a, 25a, 32a–33a). The present appellees were substituted without objection (R. 694–695).

is over $100,000, and the business during 1936 had gross receipts of approximately $200,000 and afforded regular employment to some 78 persons (R. 680, 4a–5a; see R. 39, 84, 92, 171). The enforcement of Section 1033 (c) would deprive appellants of the use of their property in that they cannot remodel their vehicles to comply with the requirements of the Act and cannot feasibly reroute their traffic so as to avoid traveling through the State (R. 680–681, 6a; see R. 40, 91, 93, 98, 171).

The appellees introduced evidence designed to prove that the operation of car-over-cab equipment on the highways of the Commonwealth is unsafe and the appellants introduced evidence designed to prove the contrary. The character and tenor of the evidence offered by the appellees, which the courts below accepted, is shown in the findings of fact and opinions of the courts below (see R. 482a–485a, 681–685).

The Interstate Commerce Commission on December 23, 1936, prescribed rules and regulations governing qualifications of employees and safety of operation and equipment of all common and contract carriers by motor vehicle pursuant to Section 204 (a) (1) and (2) of the Motor Carrier Act, 1935 (R. 525a-1—525a-69; Ex Parte No. MC—4, *Motor Carrier Safety Regulations*, 1. M. C. C. 1).

On April 27, 1938, the Dauphin County court filed an opinion and entered a decree nisi dissolving the preliminary injunction and dismissing the bill of complaint (R. 479a–498a).

On December 5, 1938, while the appeal before the Supreme Court of Pennsylvania was pending, the Examiner of the Interstate Commerce Commission filed a report (R. 671–678) concluding that there was no need for further safety regulations pertaining to equipment so constructed that all or part of one of the automobiles being transported protrudes over the cab of the tractor unit and that the operation of such equipment was permitted by the safety regulations of the Commission then in effect. Appellants on December 21, 1938, filed a petition (R. 656–665) with the Pennsylvania Supreme Court for remission of the record to the Dauphin County court "for the purpose of reopening the same to permit the introduction of evidence of the action or actions taken by the Interstate Commerce Commission or its agents * * *." On January 3, 1939, the supreme court entered an order (R. 678–679) refusing the petition to remit but providing that "the petition to reopen the hearing before the Interstate Commerce Commission and the report of the examiner may be used by appellants at argument if they deem it material."

Subsequently, on March 11, 1939, the Commission, following extensive hearings, issued its report entitled *In re Car Over Cab Operations*, 12 M. C. C. 127, in which the following conclusion was reached:

> The record discloses no testimony whatsoever to show that the operation of motor

vehicles, used in transporting new automobiles, and which are so constructed that one of the automobiles being transported extends in whole or in part over the cab, is unsafe. On the contrary, the evidence is clear that the average number of accidents in which vehicles of this type are involved is less than the country's average for all trucks. We find no reasons of record why the operations of such vehicles should be forbidden. The safety regulations heretofore prescribed by us, of course, apply to these as well as other vehicles operated by common and contract carriers in interstate or foreign commerce. The operations of vehicles so equipped are therefore permitted by the existing regulations, and there is no need for change.

On July 3, 1939, the Pennsylvania Supreme Court filed an opinion (R. 679-694) affirming the decree of the trial court dismissing the bill of complaint. The court first held that Section 1033 (c) was not in violation of the state constitution or the due-process clause of the federal constitution, and then concluded that Section 1033 (c) did not impose an unreasonable burden upon interstate commerce and that neither the Motor Carrier Act, 1935, nor the rules and regulations and reports of the Commission had superseded state safety regulations as applied to carriers operating in interstate commerce. The court referred specifically to the report of the Commission (*In re Car Over Cab Operations*, 12 M. C. C. 127), filed March 11,

1939,[4] and asserted that "it was not considered by the court below, nor is it part of the record on this appeal. The report is negative in character, is based entirely upon ex parte testimony and a careful study thereof discloses no intention that it was to constitute a formal rule or regulation of the Commission with respect to car over the cab equipment. Certainly it cannot be regarded as having a purpose to replace existing state law upon the subject" (R. 693). The court also concluded that—

> While Section 204 (a) 1, 2, and 3 of the act (49 U. S. C. A. 304) does confer upon the Commission power to establish reasonable requirements concerning safety of operation and equipment, the general language of this Section is necessarily modified and limited by the specific direction to the Commission set forth in Section 225 (49 U. S. C. A. 325) of the act "to investigate and report on the need for federal regulation * * *." Consequently it would

[4] Section 14 (3) of Part 1 of the Interstate Commerce Act (c. 382, § 4, 25 Stat. 859), which is incorporated, by Section 204 (f), in the Motor Carrier Act, 1935, reads as follows:

"The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained, in all courts of the United States, and of the several States, without any further proof or authentication thereof * * *."

appear that Congress intended to leave regulation of such matters as safety and regulation of the highways in the control of the states until a future time" (R. 691).

Interest of the United States and the Interstate Commerce Commission

The United States and the Commission submit this brief as *amici curiae* because the decision of the Pennsylvania Supreme Court raises issues of great public importance and threatens substantially to impair and obstruct the execution of powers conferred upon the Commission by the Motor Carrier Act, 1935:

1. The narrow construction placed upon Section 204 (a) (1), (2) and (3) of the Act, if sustained, would seem to confine the powers of the Commission with respect to qualifications and maximum hours of service of employees and safety of operation and equipment merely to conducting investigations and making advisory reports to Congress on the need for federal legislation. Such a construction would deprive the Commission of authority to deal effectively with the serious problems of accident prevention and would thwart the manifest intention of Congress in passing the Act.

2. The decision below misconstrues the scope of the regulations and reports issued by the Commission and condones legislation forbidding operations by common and contract carriers in interstate commerce which the Commission after careful investi-

gation has approved as safe and has authorized by its existing regulations.

3. The decision below, if permitted to stand, would afford an opportunity for the gradual whittling away of the Commission's wholly adequate safety requirements, thus encouraging needless diversity and fostering state regulations burdening the operation in interstate commerce of vehicles numbered in the hundreds of thousands.[5]

SUMMARY OF ARGUMENT

The Motor Carrier Act, 1935, in terms, authorizes the Commission to promulgate regulations and to occupy the field with respect to safety of equipment used by motor carriers operating in interstate and foreign commerce. This construction of the Act is confirmed by the circumstances attending its drafting, the committee reports, and the

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[5] The Fifty-third Annual Report of the Commission (p. 110) refers to the fact that up to October 31, 1939, identification plates to the number of 234,215 had been issued. "These plates are not required to be renewed from year to year" (Fifty-second Annual Report, p. 89).

In *In re Car Over Cab Operations*, 12 M. C. C. 127 (March 11, 1939), the Commission declared: "It appears from the record that there are approximately 200 carriers engaged in truck-away and drive-away operations, of which about 50 are private carriers. All of the 150 common and contract carriers use the 'special' equipment [in which one of the transported vehicles projects over the cab] to greater or lesser extent. The total number of units (truck or tractor, plus full trailer or semitrailer) in use in truck-away operations by the 150 common and contract carriers was placed at 5,000 with an estimated cost of $3,500 per unit, or a total initial investment of $17,500,000."

Congressional debates. It is likewise supported by the decisions of this Court and the state courts in construing other provisions of the Motor Carrier Act, 1935, and the analogous railroad safety acts.

The Commission, pursuant to the authority thus conferred, issued comprehensive safety regulations governing common and contract carriers subject to its jurisdiction. These regulations were intended by the Commission to prescribe exclusive requirements with respect to the safety of equipment used by such carriers. The Commission takes the position that state regulations governing safety of equipment used by such carriers are neither necessary nor desirable. Any doubt whether these regulations authorize the particular car-over-cab operations prohibited by the statutes of Pennsylvania is dispelled by the proceeding of the Commission in *In re Car Over Cab Operations,* 12 M. C. C. 127. In that proceeding, the Commission issued a definitive interpretation of its prior formal regulations as permitting common and contract carriers in interstate commerce to carry on such operations irrespective of the statutes of Pennsylvania.

The Commission's regulations are valid as applied to the car-over-cab transportation by common and contract motor carriers operating in interstate commerce. Such an application of the regulations is clearly authorized by the Act and raises no substantial constitutional questions.

ARGUMENT

A. The Motor Carrier Act, 1935, authorizes the Commission to occupy the field of regulating safety of equipment

The events leading to the enactment of the Motor Carrier Act, 1935, are relatively well known. Demands for federal regulation of the motor carrier industry had engaged the attention of Congress with increasing frequency since the year 1925.[5] The Commission and the Cordinator of Transportation had submitted a series of reports to Congress recommending comprehensive federal regulation of motor carriers operating in interstate commerce.[6] The Act as finally passed was based upon a bill originally drafted by the Coordinator and recommended in his reports dated March 10, 1934, and January 23, 1935.[7] We urge in this part

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[5] More than thirty bills were introduced in Congress between March 3, 1925, and March 23, 1933. Hearings were held on six of them and several were the subject of debate in Congress. An analysis of their provisions may be found in K. Stecher, *Proposed Federal Regulation of Interstate Carriers by Motor Vehicle* (1932), 17 Minn. L. Rev. 1; and in Paul G. Kauper, *Federal Regulation of Motor Carriers* (1934), 33 Mich. L. Rev. 1, 239.

[6] Motor Bus and Motor Truck Operation, 140 I. C. C. 685 (1928); Coordination of Motor Transportation, 182 I. C. C. 263 (1932); Regulation of Transportation Agencies (Senate Document No. 152, 73d Cong., 2d Sess.); Report of the Federal Coordinator of Transportation, 1934 (Senate Document No. 89, 74th Cong., 1st Sess.)

[7] Senate Document No. 152, 73d Cong., 2d Sess.; Senate Document No. 89, 74th Cong., 1st Sess.; 79 Cong. Rec. 1420, 5651.

of our brief that the Motor Carrier Act authorizes the Commission to prescribe requirements concerning safety of equipment and thereby to occupy the field of regulating the safety of equipment of motor carriers subject to its jurisdiction.

1. *The Terms of the Act.* The Act provides a comprehensive scheme for the regulation of transportation by motor carriers engaged in interstate or foreign commerce. It is declared to be the policy of Congress, *inter alia*, to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of such transportation; to promote adequate, economical and efficient service by motor carriers; to develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense, and to cooperate with the several States and their duly authorized officials in the administration and enforcement of the Act (Section 202 (a)). The duty and power to carry out the provisions of the Act is vested in the Commission (Section 202 (b)).

Section 204 (a) provides that it shall be the duty of the Commission—

> (1) To regulate common [and contract *] carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to continuous and adequate service,

* Subdivision (2) is identical with (1), except that it applies to *contract* carriers.

transportation of baggage and express, uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

* * * * * *

(3) To establish for private carriers of property by motor vehicle, if need therefor is found, reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and standards of equipment.

* * * * * *

(5) For the purpose of carrying out the provisions pertaining to safety, the Commission may avail itself of the assistance of any of the several research agencies of the Federal Government having special knowledge of any such matter, to conduct such scientific and technical researches, investigations, and tests as may be necessary to promote the safety of operation and equipment of motor vehicles as provided in this chapter; the Commission may transfer to such agency or agencies such funds as may be necessary and available to make this provision effective.

Section 225 authorizes the Commission—

to investigate and report on the need for Federal regulation of the sizes and weight of motor vehicles and combinations of motor vehicles and of the qualifications and

maximum hours of service of employees of all motor carriers and private carriers of property by motor vehicle; and in such investigation the Commission shall avail itself of the assistance of all departments or bureaus of the Government and of any organization of motor carriers having special knowledge of any such matter.

The quoted provisions of Section 204 (a) plainly authorize the Commission on its own motion to establish effective requirements concerning *safety of equipment* used by motor carriers operating in interstate commerce. The argument to the contrary, advanced by the court below (R. 691), that this grant of power is modified and limited by the authorization in Section 225 to investigate and report to Congress on the need for federal regulation of the sizes and weight of motor vehicles, is without merit. In the first place, such a construction of the Act requires the unreasonable assumption that much of subdivisions (1), (2), (3), and (5) of Section 204 (a) is superfluous and merely duplicates Section 225. Each section, for example, refers to qualifications and maximum hours of service of employees of motor carriers. Each authorizes the Commission to avail itself of the assistance of other federal agencies. It is more reasonable to conclude that each section seeks to achieve a different objective and that neither duplicates the other. In addition, the construction suggested by the court below apparently rests upon

the further assumption that the phrase "safety of operation and equipment" is synonymous with "sizes and weight of motor vehicles." There is no basis for so assuming. There are innumerable safety requirements—adequate lights, flares and fuses, fuel containers, and safety glass, to mention only a few—which are in no way related to size and weight requirements. Further, there is substantial reason for construing the Act, according to its plain meaning, as authorizing the establishment of reasonable requirements by the Commission pursuant to Section 204 (a) and as providing, also, for a report to Congress on the subjects listed in Section 225. Such a report would serve a valuable purpose even though the Commission issued regulations. It would inform Congress of the steps concerning qualifications and hours of service of employees which the Commission had taken under Section 204 (a) and would furnish the information essential to the enactment of more elaborate statutory controls, if they should be needed, both over employees and sizes and weight of vehicles. Finally, any doubt whether Section 204 (a) contemplates the establishment by the Commission of safety regulations is dispelled by Section 203 (b). That section in terms provides that "Nothing in this Act, *except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation and standards of equipment*, shall be construed to include" certain specified classes of

operations. The italicized clause demonstrates beyond question both that the safety provisions are of large importance in the statutory scheme and that they authorize the issuance of effective regulations by the Commission.

This general grant of power to the Commission to establish reasonable requirements with respect to safety of equipment plainly includes the authority to supersede any state legislation covering the same subject and applicable to motor carriers operating in interstate or foreign commerce. Compare *Napier* v. *Atlantic Coast Line R. Co.*, 272 U. S. 605. An examination of the Act discloses an intention by Congress to adopt a comprehensive regulatory scheme for such carriers to be administered by the Commission. General duties and powers are conferred on the Commission to regulate phases of the motor-carrier industry which demand uniform and consistent treatment.[9] The use of joint state and federal boards suggests that action by the Commission was contemplated which

[9] The following aspects of the motor-carrier industry, among others, come within the scope of the Commission's authority: issuance of certificates of public convenience and necessity for common carriers operating in interstate or foreign commerce on any public highway (§ 206); issuance of permits for contract carriers (§ 207); brokers and brokerage licenses (§§ 204 (a) (4), 211); suspension, revocation, and transfer of certificates and permits (§ 212); consolidations and acquisition of control (§ 213); issuance of securities (§ 214); security for the protection of the public (§ 215); rates, fares, and charges of common carriers (§ 216); tariffs of common and contract carriers (§§ 217, 218); and accounts, records, and reports (§ 220).

would be of vital concern to the several states (Section 205). The specific reservation of power to the states in Section 202 (c), moreover, manifests the intention of Congress to restrict state regulation concerning matters which have been the subject of action by the Commission to local, intrastate commerce only.[10] It is apparent, therefore, that the Act in terms gives the Commission complete power to establish reasonable requirements and to occupy the field with respect to the safety of the equipment used by motor carriers subject to its jurisdiction.

2. *The legislative history of the Act.* The circumstances attending the drafting of the statute, the committee reports and the congressional debates all lead to the same conclusion. A brief review of this legislative background will demonstrate the error of the narrow construction adopted by the court below.

(a) The report submitted to the Seventy-third Congress, Second Session (Senate Document No. 152), by the Coordinator of Transportation included (pp. 170–221) an exhaustive survey of existing state regulations applicable to motor car-

[10] Section 202 (c) reads as follows: "Nothing in this chapter shall be construed to affect the power of taxation of the several States or to authorize a motor carrier to do an intrastate business on the highways of any State, or to interfere with the exclusive exercise by each State of the power of regulation of intrastate commerce by motor carriers on the highways thereof."

riers. It pointed out (p. 32) that "The States regulate extensively the length, width, height, and speed of motor vehicles and their maximum gross weights, and require that they be equipped with a variety of safety appliances" and observed (p. 32) that "the existing lack of uniformity and the character of the restrictions set up by some of the States constitute, in the opinion of some, a serious interference with the free flow of interstate commerce. Federal action is therefore urged." The action recommended, however, distinguished between various types of state regulations. "Upon analysis, it [was] found that the requirements as to gross weights, lengths, and widths of vehicles are often grounded in State policies with respect to the design of highways (*id.*)." Since "questions of highway design and highway costs are highly technical" the Coordinator recommended that this subject, together with the results of an investigation of working conditions in the industry, be reserved for consideration in future reports (*id.*). The recommended Federal motor carrier bill, accordingly, drew a distinction between matters concerned with safety of operation and equipment and those connected with sizes and weights of vehicles, and working conditions in the industry.[11] In the words of

[11] It may be noted that other road authorities, as well as the Coordinator, treat the regulation of equipment as a matter quite different from regulation of size and weight. See National Conference on Street and Highway Safety, Uniform Act Regulating Traffic on Highways (Dep't. of Agriculture, Bureau of Public Roads, 1939), Arts. XVI, XVIII.

the Coordinator (p. 33): "It gives the Commission authority to make reasonable requirements with respect to safety of operation and equipment. It also authorizes the Commission to investigate and report on the need for Federal regulation of the sizes and weights of motor vehicles used in interstate and foreign operations, and of the qualifications and maximum hours of service of employees, in the case of all motor carriers, including private carriers of property." This bill was again recommended by the Coordinator in his report of January 1935, with changes not here relevant, and was introduced in the Seventy-Fourth Congress, First Session, as S. 1629.[12]

(b) The Senate Committee on Interstate and Foreign Commerce, after holding extensive hearings, materially strengthened the provisions of the bill with respect to qualifications and maximum hours of service of employees and safety of operation and equipment. Subdivision (3) was added to Section 204 (a), thus extending regulation of such matters to private carriers.[13] Section 203 (b) was amended so as to apply the safety provisions to vehicles otherwise exempt under the Act. The Committee in its report added (p. 1): "The bill as originally introduced provided in Section 325

[12] 79 Cong. Rec. 1420, 5651.

[13] Report of Committee on Interstate and Foreign Commerce to accompany S. 1629, Sen. Rep. No. 482, 74th Cong., 1st Sess., p. 1.

for an investigation and report upon the need for Federal regulation of the qualifications and maximum hours of service of employees of motor carriers of all classes. Such an investigation is still authorized (Sec. 225), but if the Commission determines after investigation that there is need for such regulation, it may impose reasonable requirements without further legislation."

(c) The debates confirm the intention of Congress to confer on the Commission authority to impose requirements and to supersede state laws concerned with safety of equipment. Senator Wheeler, the Chairman of the Committee, in explaining the provisions of the bill, emphasized the point that the changes made by the Committee were designed to strengthen the authority of the Commission with respect to matters affecting safety.[14] The grant of power to establish requirements concerning qualifications and maximum hours of service of employees was stated to have been motivated primarily by considerations respecting the safety of motor carrier transportation.[15] Even more striking evidence of the intention of Congress is shown by the action taken with respect to an amendment offered by Senator Duffy which, in part, provided—

> That the laws enacted in any State and regulations thereunder that relate to the

[14] See 79 Cong. Rec. 5649–5670.

[15] 79 Cong. Rec. 5652, 5660–5661. See also 79 Cong. Rec. 12204–12237.

> maintenance, protection, safety, or use of the highways therein, which do not discriminate [against] motor vehicles used in interstate commerce, shall not be deemed to be a burden on or an obstruction or impediment to interstate commerce, and the power to enact such laws and promulgate such regulations thereunder is hereby expressly recognized and confirmed to the respective States. [79 Cong. Rec. 5735.]

Senator Wheeler opposed the adoption of this amendment on the ground that "it might seriously hamper the Commission in fixing and regulating the hours of service, or it might seriously interfere with the safety provisions included in the bill at the present time" (79 Cong. Rec. 5737). The amendment was rejected.

The extensive House debates likewise attest the soundness of the construction here urged by the Commission. A large part of the discussion was concerned with the safety provisions of the Act and the extensive power of the Commission was recognized by every speaker who dealt with the subject.[16] It was repeatedly stated that the Act gives the Commission power to regulate safety of operation and equipment.[17] The following colloquy expresses the understanding of the House with respect to the Act (79 Cong. Rec. 12208):

> Mr. ANDRESEN. With reference to the safety features, will the Interstate Com-

[16] See 79 Cong. Rec. 12196–12200, 12204–12237.

[17] See 79 Cong. Rec. 12199, 12205, 12208, 12211, 12224–12225, 12230.

merce Commission have inspectors out to go over the commercial carriers on the highways?

Mr. MERRITT of Connecticut. They will have the right to make regulations concerning all vehicles.

Mr. ANDRESEN. And in order to secure safety we can assume that the Interstate Commerce Commission will see that the trucks and buses are in proper condition at all times?

Mr. MERRITT of Connecticut. I think that is true; yes. This will have to be done gradually, of course. They will have to go along as experience dictates.

It may also be observed that there was practically no opposition to the grant of such extensive authority to the Commission.[18] Even the members of the subcommittee which opposed the passage of the bill had no quarrel with the grant of broad powers concerning safety of operation and equipment. As Mr. Wadsworth explained (79 Cong. Rec. 12199):

My complaint against this bill is that it should not attempt the regulation of rates, that we should be satisfied with a cautious start, and confine our regulations to safety on the highways and then see where we get.

That is the principal difference, may I say, between the subcommittee's bill, which was rejected by the Committee on Interstate and Foreign Commerce, and the bill now before us. The great difference is that this

[18] But see 79 Cong. Rec. 12224–12225.

bill goes the whole length of regulation of rates, whereas the subcommittee's bill left the rate problem alone to see how the Commission would get along in regulating safety devices and hours of labor.

3. *The cases.* Support for our position is also found in the decision of this Court in *Welch Co.* v. *New Hampshire,* 306 U. S. 79. The Court there stated: "Without so deciding, we assume, so far as concerns the periods of continuous service condemned by the state commission, that, when the federal regulations [issued under the Motor Carrier Act, 1935] take effect they will operate to supersede the challenged provisions of the state statute." We submit that such an assumption is correct and is equally applicable to Commission regulations with respect to safety of equipment. The legislative history, especially the House debate,[19] demonstrates the interrelationship between the provisions concerned with maximum hours and those dealing with safety of operation and equipment. The extensive grant of power to the Commission to regulate hours of service confirms its power to regulate safety of equipment and thereby supersede state laws.

Our position is also confirmed by state court decisions construing the Motor Carrier Act. Questions analogous to those present in this case were considered by the Court of Errors and Appeals of Connecticut in *University Overland Express, Inc.*

[19] 79 Cong. Rec. 12204–12237.

v. *Alsop*, 122 Conn. 275, 189 Atl. 458 (1937). The Connecticut Public Utility Commission there sought to compel the plaintiff, a motor carrier engaged in transporting automobiles in interstate commerce, to carry certain insurance issued by companies licensed to do business in Connecticut. At the time the trial court heard the case, the Interstate Commerce Commission had not promulgated rules and regulations with respect to insurance. Subsequently, the Commission did issue such rules and regulations. The Court of Errors and Appeals construed the Motor Carrier Act as empowering the Commission to supersede the authority of the state on the subject of insurance and concluded that the Commission had done so. The court held, therefore, that the action taken by the Commission had rendered inoperative the power of the state agency to enforce compliance with its regulations. The Supreme Court of New Hampshire reached a like conclusion in *University Overland Express, Inc.* v. *Griffith*, 89 N. H. 395, 200 Atl. 390 (1938).

The decision of this Court in *South Carolina State Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177, is in no way opposed to our contention that the Commission has authority to prescribe requirements concerning *safety of equipment* which supersede state regulations. The sole question before the Court in that case was whether, in the absence of superseding federal legislation, the South Carolina statute limiting the size and weight of vehicles operated on its highways imposed an unreasonable

burden on interstate commerce. The Commission had not prescribed size and weight regulations and no appeal was taken from the ruling of the trial court that the challenged provisions of the statute had not been superseded by the Federal Motor Carrier Act. Consequently, the decision is no precedent on the scope of the authority conferred by the Act upon the Commission. In addition, the legislative history of the Act (pp. 18–24, *supra*) shows that there is a basis for drawing a distinction between regulations with respect to safety of operation and equipment and regulations with respect to sizes and weight. Compare *Barnwell Bros.* v. *South Carolina State Highway Dept.*, 17 F. Supp. 803, 806–808 (E. D. S. C.). Congress clearly intended to authorize the Commission to regulate all aspects of safety of operation and equipment. The only possible limitation on this broad grant of power is confined to those problems of size and weight which the Coordinator had found to be peculiarly connected with technical questions of highway design and highway cost and which, therefore, were to be the subject of a further investigation and report. See *Regulation of Transportation Agencies*, Senate Document No. 152, 73d Cong., 2d Sess., p. 32. This investigation and report has not been completed, and no regulations governing sizes and weight of vehicles have as yet been promulgated by the Commission.

4. *Analogous Acts.* Congress in passing the Motor Carrier Act, 1935, had before it the experi-

ence of the Commission in administering the various railroad safety statutes, including the Locomotive Boiler Inspection Act, February 17, 1911, c. 103, 36 Stat. 913, as amended March 4, 1915, c. 169, 38 Stat. 1192, and June 7, 1924, c. 355, 43 Stat. 659. The Coordinator of Transportation in his 1934 report to Congress (Senate Document No. 152, 73d Cong., 2d Sess., pp. 223–226) had mentioned specifically the provisions of that act, as well as the other railroad safety measures, for the purpose of comparing them with the safety provisions of the suggested motor carrier bill. The motor carrier bill drafted by the Coordinator conferred authority on the Commission with respect to safety of operation and equipment in terms similar to the terms used to describe its powers under the Boiler Inspection Act. Congress adopted the same terminology. In these circumstances, surely, the construction which this Court has placed upon the Boiler Inspection Act may be considered to be relevant to the determination of the proper construction to be accorded the Motor Carrier Act. In *Napier* v. *Atlantic Coast Line R. Co.*, 272 U. S. 605, the Court, speaking through Mr. Justice Brandeis, concluded that the grant of authority to the Commission in general terms in the Boiler Inspection Act indicated an intention by Congress to occupy the field of regulating locomotive equipment. We submit that the principles there applied impel the conclusion that the Motor Carrier Act, 1935, au-

thorizes the Commission to occupy the field of regulating the safety of equipment used by motor carriers subject to its jurisdiction. See also *Pennsylvania Railroad Company* v. *Public Service Commission*, 250 U. S. 566; *Southern Ry. Co.* v. *R. R. Commission of Indiana*, 236 U. S. 439; *Erie R. R.* v. *New York*, 233 U. S. 671; *Northern Pac. Ry. Co.* v. *Washington*, 222 U. S. 370.

B. The Commission has occupied the field of regulating safety of equipment

We turn, then, to consider the action taken by the Commission pursuant to Section 204 (a) of the Act. It is our position that the rules and regulations promulgated by the Commission have superseded all state requirements of *safety of equipment* of common and contract carriers operating in interstate commerce and, in addition, that such rules and regulations are in direct conflict with the statutes of Pennsylvania called in question in this case.

1. The Commission approached its task of implementing and effectuating the provisions of Section 204 (a) in the light of the alarming annual toll of accidents upon the public highways (R. 525a–3). It sought by its findings and regulations not only to have a direct effect upon the carriers subject to its jurisdiction but also to have a real influence upon the general accident situation (R. 525a–4). It desired to "provide a definite impetus toward greater uniformity in the statutes and reg-

ulations of the several States, and thereby toward better understanding of and compliance with highway safety requirements by the general public" (R. 525a–4).

A thorough investigation by the Commission of all aspects of the subject of highway safety preceded the promulgation of its rules and regulations. Prior to hearings, its Bureau of Motor Carriers made a study of state laws and regulations relating to motor-vehicle operation and of the practices of motor carriers in promoting safety in their own business. This was supplemented by a series of conferences with state and federal officials and with representatives of interested organizations. These activities extended over a period of about six months. On July 1, 1936, the Bureau published "Proposed Safety Regulations of the Interstate Commerce Commission Applicable to Motor Carriers Subject to the Motor Carrier Act, 1935." More than 8,500 copies of the proposed safety regulations were distributed throughout the United States, and criticism and comment were invited. Many organizations responded with detailed suggestions, and their comments were carefully assembled. Three public hearings were then conducted—at Washington, D. C.; Portland, Oregon; and Los Angeles, California—during the course of which officials from six states sat with the Commission.

The regulations finally promulgated on December 23, 1936, were comprehensive: They cover physical and mental requirements of drivers (R. 525a–31); provide for rigid inspection of vehicles before driving (R. 525a–36), stopping and parking of vehicles (525a–41), safe loading of vehicles,[20] inspection and use of lights (R. 525a–41); provide for driving under hazardous conditions (R. 525a–45), reporting of accidents (R. 525a–45); list the parts and accessories necessary for safe operation (R. 525a–47); provide for performance and condition of brakes (R. 525a–57), safety glass (R. 525a–59) and many other miscellaneous items. These motor carrier safety regulations were revised by order of the Commission dated May 23, 1939, and

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[20] The 1936 rules concerned with safety of loading provided:

"10. No motor vehicle shall be driven unless the driver thereof shall have satisfied himself that the tailboard or tailgate, tarpaulins, chains (except ground or contact chains), ropes, stakes, poles, and the like, or any part of the load, are securely fastened to prevent dangling, flapping, swinging, or failing from side, end, or top of load. (R. 525a–37.)

"17. * * * In all cases turns shall be made with due caution, having due regard to the length of the motor vehicle and any load thereupon, the width of the roadway, and other traffic. Before making any turn the motor vehicle shall be driven into the proper lane well in advance of the intersection. (R. 525a–40).

"34. No motor vehicle shall be so loaded as to obscure the driver's view ahead or to either side, or to interfere with the free movement of his arms or legs, or to prevent his free and ready access to the accessories required for emergencies. (R. 525a–46.)"

the revised version became effective January 1, 1940. The Commission is filing a booklet containing these revised regulations with its brief. The following rules contained in such regulations appear to be especially pertinent to the case at bar:

2.09. SAFE LOADING.

2.091. Distribution and Securing of Load.—The load on every motor vehicle transporting property *shall be properly distributed,* and if necessary, secured, *in order to prevent unsafe shifting of the load or unsafe operation of the vehicle.*

2.092. Fastenings Secure.—No motor vehicle shall be driven unless the driver thereof shall have satisfied himself that the tailboard or tailgate, tarpaulins, spare tires, *and all means of fastening the load are securely in place.*

2.093. Load Not to Interfere With Driver.—No motor vehicle shall be so loaded *as to obscure the driver's view ahead, or to the right and left sides,* or to interfere with the free movement of his arms or legs, or to prevent his free and ready access to the accessories required for emergencies.[21] [Italics added.]

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[21] Related rules are:

216. VEHICLE MUST BE IN PROPER POSITION FOR MAKING TURNS.—Upon all highways any right turn shall be made from a position which is as close as practicable to the extreme right side of the traveled portion of the highway. Upon two-way highways any left turn shall be made from a position which is as close as practicable to the center of the traveled portion of the highway. Upon one-way highways and upon highways on which the opposing streams of traffic

The safety regulations thus promulgated are intended by the Commission to prescribe exclusive requirements with respect to the safety of the equipment used by common and contract carriers subject to its jurisdiction. The Commission takes the position that state regulations governing the *safety of equipment* used by such carriers are neither necessary nor desirable. It stands ready to reconsider its safety regulations at any time that there appears reason for concluding that other or different requirements are justified. Such a method furthers the uniformity of all safety regulations and promotes safety in motor transportation. The issuance of a multitude of state regulations, on the other hand, creates needless diversity and conflict and imposes burdens on interstate commerce of the type that the Motor Carrier Act, 1935, was designed to prevent.

2. It is clear, moreover, that the safety regulations of the Commission authorize car-over-cab

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are separated by a dividing strip or zone, any left turn shall be made from a position which is as close as practicable to the extreme left side of the traveled portion of such highways. *In all cases turns shall be made with due caution, having due regard to the length of the motor vehicle and any load thereon, the width of the roadway, and other traffic.* Before making any turn the motor vehicle shall be driven into the proper lane well in advance of the intersection.

6.6. DRIVER'S TRIP REPORT.—Every driver employed by a motor carrier shall at the end of his day's work or tour of duty report in writing to his employer any such defect or deficiency of the motor vehicle discovered by him during such day's work or tour of duty as would be likely to affect the safety of operation of that vehicle. [Italics added.]

operations such as are prohibited by the Pennsylvania statutes involved in this case. Any doubt on that score has been dispelled by the proceeding of the Commission in *In re Car Over Cab Operations*, 12 M. C. C. 127 (March 11, 1939). The purpose of that proceeding was described by the Commission in its report, as follows:

> By order dated December 23, 1936, pursuant to the provisions of section 204 (a) (1) and (2) of the Motor Carrier Act, 1935, we prescribed rules and regulations governing the qualifications of drivers and the safety of operation of motor vehicles operated by common and contract carriers in interstate or foreign commerce. At the hearings which preceded the issuance of that order, no testimony was submitted concerning the safety of the type of motor vehicle used in transporting new automobiles which is so constructed that one of the new automobiles being transported extends in whole or in part over the cab of the truck or tractor and for that reason this question was not then considered.
>
> This proceeding involves the single issue of whether such type of motor vehicle used in transporting new automobiles in interstate or foreign commerce is safe.

As a result of its investigations in this proceeding, the Commission reached the following conclusion:

> The record discloses no testimony whatsoever to show that the operation of motor

vehicles, used in transporting new automobiles, and which are so constructed that one of the automobiles being transported extends in whole or in part over the cab, is unsafe. On the contrary, the evidence is clear that the average number of accidents in which vehicles of this type are involved is less than the country's average for all trucks. We find no reasons of record why the operations of such vehicles should be forbidden. The safety regulations heretofore prescribed by us, of course, apply to these as well as other vehicles operated by common and contract carriers in interstate or foreign commerce. The operations of vehicles so equipped are therefore permitted by the existing regulations, and there is no need for change.[22]

It is apparent from this statement that the Commission intended—and it still intends—to authorize the use by common and contract carriers in interstate commerce of car-over-cab transportation equipment. The Commission, in the report, was making a definitive construction of its prior formal

[22] The Commission added:

"As indicated in the foregoing discussion, the conclusions which we have reached on the evidence of record are not in harmony with a provision of the laws of the Commonwealth of Pennsylvania which prohibits the operation of vehicles of the type in question. The validity of this provision was sustained by a decision, rendered April 27, 1938, of a judge of the Dauphin county court of Pennsylvania. So far as we are informed, the laws of no other State contain a similar prohibition."

regulations. Those regulations, accordingly, must be regarded as being in direct conflict with the statutes of Pennsylvania.

3. This report was before the Pennsylvania Supreme Court at the time it decided this case, but was dismissed with the observation (R. 693) that—

> * * * The report is negative in character, is based entirely upon ex parte testimony, and a careful study thereof discloses no intention that it was to constitute a formal rule or regulation of the Commission with respect to the operation of car over the cab equipment. Certainly it cannot be regarded as having a purpose to replace existing state law upon the subject.

As previously indicated, the court below was obviously mistaken as to the effect of the report. In addition, the report discloses that the evidence at the hearing was not ex parte but was taken only after notice and opportunity to appear was afforded to all interested persons and that it fully justifies the conclusions of the Commission. The care taken by the Commission to secure an adequate record on which to base its conclusions is evidenced by the following quotation from the report:

> When this proceeding was instituted, we specially notified the authorities of the Commonwealth of Pennsylvania in order that they might have ample opportunity to

take such part in the hearing as they deemed desirable. A representative of the Commonwealth appeared, but withdrew from the proceeding upon the ground that we were attempting "to pass the burden and expense of doing the investigation for the Commission upon the Commonwealth." No evidence was therefore submitted in behalf of the Commonwealth. Later, in a letter addressed to the Commission, the representative asked that the evidence be reviewed which was presented in the case referred to above, before the Pennsylvania court. He was informed that this evidence could not, as a matter of law, be considered unless it were presented in our own proceeding, but that the Commission would, no doubt, be willing upon request to reopen the latter for this purpose. No such request was made.

Notice of the proceeding was given widely throughout the country prior to the hearing, and the recommended report of the examiner was given like publicity. We recognized that at the hearing the only evidence was introduced by or on behalf of carriers engaged in the type of operation under investigation, and we agree without question that it is the duty of the Commission in such inquiry to see to it, so far as lies within its power, that the pertinent facts are adequately developed of record. With this end in view, we have had the record examined carefully by the technical men on our staff to determine whether or not it contains an adequate pres-

entation of the facts. They think that it does.

* * * * *

In all the circumstances we believe that we should issue our report in this investigation upon the record before us without further delay, arriving at the conclusions which that record warrants. We shall, however, undertake to keep informed as to the operations of the vehicles in question and their performance from the point of view of the public safety, and if it should at any time appear that there is reason to believe that our present conclusions were not justified, the proceeding will be reopened at once for further hearing.[23]

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[23] It may be observed that thirty-seven states have adopted (either by the action of their legislatures or their regulatory commissions), for application to intrastate operations, portions of the Motor Carrier Safety Regulations of the Commission (Parts I to IV, inclusive) promulgated December 23, 1936. Nineteen have adopted the regulations either in whole or in part. The Hours of Service regulations have been adopted *in toto* by Pennsylvania.

The National Association of Railroad and Utilities Commissioners, at its 1936 annual convention, unanimously adopted the following resolution (R. 525a–29):

"Be it resolved, That this convention tentatively approve the proposed safety regulations of the Interstate Commerce Commission applicable to motor carriers subject to the Motor Carrier Act of 1935; and

Be it further resolved, That the National Association of Railroad and Utilities Commissioners recommend to the various State commissions that their safety regulations be amended, where any conflict now exists, so as to conform with the Interstate Commerce Commission's regulations as finally adopted and that where legislative action is necessary to bring this about, steps be taken to have such action taken in the next session of the various State legislatures."

C. The regulations of the Commission are valid as applied to car over cab equipment

The remaining questions are: whether the Pennsylvania statutes governing car-over-cab transportation may properly be regarded as within the field of regulation which the Act authorizes the Commission to occupy (pp. 12–28, *supra*), and whether the Act so construed is constitutional.

1. Our previous discussion of the terms and the legislative history of the Act (pp. 18–24, *supra*) demonstrate the importance of the safety provisions in the statutory scheme. It seems clear that Congress intended the Commission to establish regulations covering every aspect of safety of operation and equipment of motor carriers subject to its jurisdiction. The possible exception to the broad grant of power with respect to safety matters is the regulation of sizes and weight. There is some basis for concluding that sizes and weight of vehicles have such an intimate relationship to technical problems of highway design that a further investigation and report was contemplated prior to the issuance of sizes and weight regulations. Compare *Barnwell Bros.* v. *South Carolina State Highway Dept.*, 17 F. Supp. 803 (E. D. S. C.), appealed on other grounds and reversed, 303 U. S. 177. But, manifestly, the regulation of car-over-cab equipment attempted by Pennsylvania is not a sizes-and-weight problem. In the first place,

the Commission has decided that the Act confers authority upon it to authorize such equipment to operate in interstate commerce irrespective of the State laws. *In re Car Over Cab Operations,* 12 M. C. C. 127 (March 11, 1939). This practical interpretation of the Act by the agency largely responsible for its draftsmanship and charged with carrying out its purposes is, in our opinion, entitled to considerable weight. Further, the statutes which the Commission claims it has power to supersede are not regarded by Pennsylvania as establishing sizes-and-weight provisions. Provisions with respect to sizes and weight of vehicles operating on the highways of the Commonwealth are found in other sections of the Pennsylvania Motor Vehicle Code. Sections 902–903, *infra,* pp. 46–52. All of the vehicles operated by appellants come well within the size-and-weight limitations there erected. Finally, both courts below support the statutes on the ground that operation of such vehicles is unsafe, and both admit, inferentially, that such statutes would be superseded by federal action occupying the field of safety of equipment (R. 497a, 681–684, 689–693). It follows that since the Commission has occupied that field pursuant to authority granted by the Act and, in addition, has construed its regulations so as to create a direct conflict with the Pennsylvania statutes (pp. 28–38,

supra), the latter are invalid. See, *e. g., Napier* v. *Atlantic Coast Line R. Co.*, 272 U. S. 605.

2. The constitutional power of Congress to authorize the Commission to occupy the field and thus to supersede state laws designed to promote safety is clear. The situation presented here is in all material respects the same as that brought before this Court in *Napier* v. *Atlantic Coast Line R. Co.*, 272 U. S. 605. There, Congress had authorized the Commission to prescribe requirements concerning the safety of the equipment used on railroad locomotives. From time to time the Commission had required that locomotives used in interstate commerce be equipped with various devices. It had made no order requiring a particular fixe-box door or a cab curtain. Nevertheless, this Court declared invalid state statutes requiring the use of automatic fire-box doors and cab curtains. It declared that "state legislation is precluded, because the Boiler Inspection Act, as we construe it, was intended to occupy the field. The broad scope of the authority conferred upon the Commission leads to that conclusion. Because the standard set by the Commission must prevail, requirements by the States are precluded, however commendable or however different their purpose. Compare *Louisville & Nashville R. Co.* v. *State*, 16 Ala. App. 199; *Whish* v. *Public Service Commission*, 205 App. Div. 756; 240

N. Y. 677; *Staten Island Rapid Transit Co.* v. *Public Service Commission*, 16 F. (2d) 313."[24]

The authorities upholding federal regulations of interstate commerce which supersede similar state regulations are legion. Their general principle is equally applicable here. See *Gilvary* v. *Cuyahoga Valley Ry. Co.*, 292 U. S. 57, 60, 61; *Napier* v. *Atlantic Coast Line R. Co.*, 272 U. S. 605, 612, 613; *Oregon-Washington R. & N. Co.* v. *Washington*, 270 U. S. 87, 101, 102; *Southern Ry. Co.* v. *Railroad Commission*, 236 U. S. 439, 446, 447; *Erie R. R. Co.* v. *New York*, 233 U. S. 671, 681, 682; *Northern Pacific Ry. Co.* v. *Washington*, 222 U. S. 370, 379; *Prigg* v. *Pennsylvania*, 16 Pet. 539, 617, 618. See also *Mulford* v. *Smith*, 307 U. S. 38; *The Shreveport Case* (*Houston & Texas Ry.* v. *United States*), 234 U. S. 342; *The Minnesota Rate Cases*, 230 U. S. 352.

[24] Obviously, so far as constitutional issues are concerned, the distinction is merely verbal between a holding that Congress has intended to occupy the field and has delegated authority to the Commission to establish safety requirements and a holding that Congress has delegated authority to the Commission to establish safety requirements and to occupy the field.

CONCLUSION

The statutes of Pennsylvania are in direct conflict with rules and regulations lawfully issued by the Commission in the performance of its duty to

carry out the public policy of the United States as expressed in the Motor Carrier Act, 1935. It is, therefore, respectfully submitted that the decision of the court below should be reversed.

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JANUARY 1940.

APPENDIX A

Interstate Commerce Act, as amended, Part II, Motor Carrier Act, 1935 (c. 498, 49 Stat. 543):

SEC. 202. (a) It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest; promote adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between, and coordinate transportation by and regulation of, motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense; and cooperate with the several States and the duly authorized officials thereof and with any organization of motor carriers in the administration and enforcement of this part.

SEC. 202 (b).

(b) The provisions of this part apply to the transportation of passengers or property by motor carriers engaged in interstate or foreign commerce and to the procurement of and the provision of facilities for such transportation, and the regulation of such transportation, and of the procurement thereof, and the provision of facilities there-

for, is hereby vested in the Interstate Commerce Commission.

SEC. 202 (c).

(c) Nothing in this part shall be construed to affect the powers of taxation of the several States or to authorize a motor carrier to do an intrastate business on the highways of any State, or to interfere with the exclusive exercise by each State of the power of regulation of intrastate commerce by motor carriers on the highways thereof.

GENERAL DUTIES AND POWERS OF THE COMMISSION

SEC. 204. (a) It shall be the duty of the Commission—

(1) To regulate common carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express, uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees; and safety of operation and equipment.

(2) To regulate contract carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

(3) To establish for private carriers of property by motor vehicle, if need therefor is found, reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours

of service of employees, and standards of equipment. In the event such requirements are established, the term "motor carrier" shall be construed to include private carriers of property by motor vehicle in the administration of sections 204 (d) and (e); 205; 220; 221; 222 (a), (b), (d), (f), and (g); and 224.

SEC. 204. (f) The provisions of sections 14 and 16 (13) of part I, relating to reports, decisions, schedules, contracts, and other public records, shall apply in the administration of this part.

SEC. 225. The Commission is hereby authorized to investigate and report on the need for Federal regulation of the sizes and weight of motor vehicles and combinations of motor vehicles and of the qualifications and maximum hours of service of employees of all motor carriers and private carriers of property by motor vehicle; and in such investigation the Commission shall avail itself of the assistance of all departments or bureaus of the Government and of any organization of motor carriers having special knowledge of any such matter.

INTERSTATE COMMERCE ACT, as amended (c. 382, Sec. 4, 25 Stat. 859):

SEC. 14. * * *

* * * * * *

The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained in all courts of the United States and of the several States without any further proof or authentication

thereof. The Commission may also cause to be printed for early distribution its annual reports.

Pennsylvania Laws:

Section 1033 (c) of the Act of June 29, 1937 (75 P. S. 642), reads:

> No person shall operate a vehicle on the highways of this Commonwealth carrying any other vehicle, any part of which is above the cab of the carrier vehicle or over the head of the operator of such carrier vehicle.

That section became effective upon approval of the Governor, June 29, 1937. On June 27, 1939, said section was amended, effective September 1, 1939, to read as follows:

> No person shall operate a vehicle on the highways of this Commonwealth carrying any other vehicle the weight of which is directly above the cab of the carrier vehicle or directly over the head of the operator of such carrier vehicle.

Sections 902 and 903 of Article IX, The Vehicle Code, Act of May 1, 1929, P. L. 905, as amended June 29, 1937, P. L. 2329, provide as follows:

> Section 902. *Size of Vehicles and Loads.*—
>
> (a) No vehicle, except fire-department equipment, street sweepers, and snow plows, shall exceed a total maximum width, including any load thereon, of ninety-six (96) inches, except that the limitations as to size of vehicle stated in this act shall not apply to vehicles loaded with hay or straw in bulk.
>
> (b) No vehicle, except *vehicles used exclusively to repair overhead lights and wires, and* fire-department equipment, shall

exceed a total maximum height, including any load thereon, of *one hundred fifty (150)* inches, but nothing herein contained shall be construed to require the public authorities to provide sufficient vertical clearance to permit the operation of such vehicles, *excepting that until, but not after, January first, one thousand nine hundred forty-one, any vehicle, properly registered in Pennsylvania on the effective date of this act, may be of a total height, including any load thereon, of one hundred seventy-four (174) inches.*

(c) No vehicle, except fire department equipment, shall exceed a total maximum length, including any load thereon, of three hundred ninety-six (396) inches, and no combination of two (2) vehicles, *inclusive of load and bumpers,* coupled together, shall exceed a total maximum length of *six hundred (600) inches, excepting that until, but not after, January first, one thousand nine hundred forty-one, any combination of two vehicles, properly registered in this Commonwealth on the effective date of this act, may be of a total maximum length, not exceeding seventy (70) feet, excepting further that nothing in this subsection shall prohibit the transportation of articles impossible of dismemberment, which do not exceed seventy (70) feet.*

1. No motor vehicle shall be operated upon a highway drawing, or having attached thereto, more than one other vehicle.

2. The distance between any two vehicles, one of which is towing or drawing the other, shall not exceed fifteen (15) feet from one vehicle to the other, except when the load on the towed vehicle is coupled directly to and

is not more than five (5) feet from the towing vehicle. Whenever the connection consists of a chain, rope, bar, or cable, there shall be displayed, upon such connection, a flag not less than twelve (12) inches in length and width. Every trailer, while being drawn upon the highway, shall be so attached to the vehicle drawing the same as to prevent the wheels of such trailer from deflecting more than six (6) inches from the path of the drawing vehicle's wheels.

(d) No vehicle, except a trailer or semitrailer, shall carry any load, or part thereof, extending more than five (5) feet beyond the front extremity.

(e) No vehicle, except as herein provided, shall carry any load extending beyond the line of the fenders on the left side of such vehicle, nor extending more than six (6) inches beyond the line of the fender on the right side thereof.

(f) It shall be unlawful for any person to transport on a motor vehicle, trailer, or semitrailer, operated for the carriage of passengers for hire, a load of twenty-five (25) per centum in excess of the registered seating capacity, or for any person to cause or permit any such operation: Provided, however, That a child under the age of six years shall not be counted as a person when computing load on any such vehicle: *And provided further, That nothing contained in this subsection shall make unlawful the transportation of a load of more than twenty-five (25%) per centum in excess of the registered seating capacity, when such load is carried by a vehicle for not more than ten consecutive miles.*

(g) *No truck, tractor, and semitrailer, coupled together, except fire department*

equipment, shall exceed a total maximum length, inclusive of load and bumpers, of five hundred forty (540) inches, excepting that until, but not after, January first, one thousand nine hundred forty-one, any truck, tractor, and semitrailer, properly registered in this Commonwealth on the effective date of this act, may, when coupled together, be of a total maximum length not exceeding seventy (70) feet, excepting further that nothing in this subsection shall prohibit the transportation of articles impossible of dismemberment, which do not exceed seventy (70) feet.

Penalty.—Any person violating any of the provisions of subsections (a), (b), (c), (d), (e), *or* (*g*) of this section shall, upon summary conviction before a magistrate, be sentenced to pay a fine of ten ($10) dollars and costs of prosecution, and, in default of the payment thereof, shall undergo imprisonment for not more than five (5) days. Any person violating any of the provisions of subsection (f) of this section shall, upon summary conviction before a magistrate, be sentenced to pay a fine of not less than ten ($10) dollars or more than twenty-five ($25) dollars and costs of prosecution, and, in default of the payment thereof, shall undergo imprisonment for not more than ten ( ) days. Such fine shall be in addition to any penalty imposed by any other section or subsection of this act.

Section 903. *Weight of vehicles and loads.*—

(a) Commercial motor vehicles and truck tractors, other than those electrically operated, shall not be used or operated on any highway with gross weight exceeding those

specified for the several classes and weights of chassis as follows:

Four-Wheeled Class—Chassis Weight in Pounds:		Maximum gross weight in pounds
R	Less than 2,000	5,000
S	2,000 and over, but less than 3,000	7,000
T	3,000 and over, but less than 4,000	11,000
U	4,000 and over, but less than 5,000	13,000
V	5,000 and over, but less than 6,000	18,000
W	6,000 and over, but less than 7,500	22,000
Y	7,500 and over, but less than 9,000	25,000
Z	9,000 and over	26,000
Six-Wheeled (3 Axles) Class—Chassis Weight in Pounds:		
RZ	2,000 and over, but less than 3,000	12,000
SZ	3,000 and over, but less than 4,000	14,000
TZ	4,000 and over, but less than 5,000	16,000
UZ	5,000 and over, but less than 6,000	22,000
VZ	6,000 and over, but less than 7,500	26,000
WZ	7,500 and over, but less than 9,000	30,000
YZ	9,000 and over, but less than 12,000	34,000
ZZ	12,000 and over	36,000

(b) Electrically operated commercial motor vehicles and truck tractors shall not be used or operated on any highways with gross weight exceeding those specified for the several classes as follows:

Four-Wheeled Class:	Maximum gross weight in pounds
R	5,000
S	7,000
T	11,000
U	15,000
V	18,000
W	22,000
Y	25,000
Z	26,000
Six-Wheeled (3 Axles) Class:	
RZ	12,000
SZ	14,000
TZ	16,000
UZ	22,000
VZ	26,000
WZ	30,000
YZ	34,000
ZZ	36,000

(c) Trailers and semitrailers shall not be used or operated on any highway with gross weight exceeding those specified for the several classes as follows:

Four-wheeled (2 axles) class

Trailer or semitrailer, weight in pounds

		Maximum gross weight in pounds
A	Less than 1,000	3,000
B	1,000 and over, but less than 2,000	6,000
C	2,000 and over, but less than 3,000	10,000
D	3,000 and over, but less than 4,000	16,000
E	4,000 and over, but less than 5,000	20,000
F	5,000 and over, but less than 6,000	24,000
G	6,000 and over	26,000

Six-wheeled (3 axles) class

Trailer, weight in pounds

AZ	Less than 3,000	12,000
BZ	3,000 and over, but less than 4,000	15,000
CZ	4,000 and over, but less than 5,000	20,000
DZ	5,000 and over, but less than 6,000	26,000
EZ	6,000 and over, but less than 7,000	30,000
FZ	7,000 and over, but less than 9,000	34,000
GZ	9,000 and over	36,000

Two-wheeled class

Semitrailer, weight in pounds

A	Less than 1,000	3,000
B	1,000 and over, but less than 2,000	6,000
C	2,000 and over, but less than 3,000	10,000
D	3,000 and over, but less than 4,000	12,000
E	4,000 and over, but less than 5,000	14,000
F	5,000 and over, but less than 6,000	16,000
G	6,000 and over	18,000

(d) No two-wheeled vehicle, except fire department equipment, shall be operated upon any highway with gross weight in excess of eighteen thousand (18,000) pounds, or in excess of eight hundred (800) pounds on any one wheel for each nominal inch of width of tire.

(e) No four-wheeled vehicle, except fire department equipment, shall be operated upon any highway with a gross weight in excess of twenty-six thousand (26,000) pounds, or in excess of *eighteen* thousand

(*18,000*) pounds on any axle, or in excess of eight hundred (800) pounds on any one wheel for each nominal inch of width of tire on such wheel.

(f) No six or more wheeled vehicle, except fire department equipment, shall be operated upon any highway with gross weight in excess of thirty-six thousand (36,000) pounds, or in excess of eight thousand (8,000) pounds on the front axle, *or* in excess of *sixteen* thousand *five hundred* (*16,500*) pounds on *any one* of the rear axles, or in excess of eight hundred (800) pounds on any one wheel for each nominal inch of width of tire on such wheel; and the two rear axles shall be parallel and shall not be less than thirty-six (36) inches apart.

(g) No truck tractor and semi-trailer combined, except fire department equipment, shall be operated upon any highway with a gross weight in excess of thirty-nine thousand (39,000) pounds, or in excess of *eighteen* thousand (*18,000*) pounds on any axle, or in excess of eight hundred (800) pounds on any one wheel for each nominal inch of width of tire on such wheel; axle or axles of semitrailer shall not be less than ninety-six (96) inches from the axle of the truck tractor.

(h) No commercial motor vehicle and trailer combined, except fire department equipment, shall be operated upon any highway with a gross weight in excess of sixty-two thousand (62,000) pounds, or in excess of eight hundred (800) pounds on any one wheel for each nominal inch of width of tire on such wheel.

No truck trailer, semitrailer and trailer combined, except fire department equipment, shall be operated upon any highway

with a gross weight in excess of sixty-five thousand (65,000) pounds, or in excess of eight hundred (800) pounds on any one wheel for each nominal inch of width of tire on such wheel.

(i) Maximum gross weights provided in this section are permissible only under conditions where no other restrictions are provided in this act, or in any other laws regulating the gross maximum weight of vehicles.

Penalty.—Any person operating any vehicle upon any highway with a gross weight exceeding by more than five (5) per centum the maximum gross weight allowed, and not exceeding by more than ten (10) per centum the maximum gross weight allowed, shall, upon summary conviction before a magistrate, be sentenced to pay a fine of twenty-five ($25) dollars and costs of prosecution, and, in default of the payment thereof, shall undergo imprisonment for not more than five (5) days, and any person operating any vehicle on any highway with a gross weight exceeding by more than (10) per centum the maximum gross weight allowed, shall, upon summary conviction before a magistrate, be sentenced to pay a fine of fifty ($50) dollars and costs of prosecution, and, in default of the payment thereof, shall undergo imprisonment for not more than ten (10) days. [Italics added.]

APPENDIX B

Report of Interstate Commerce Commission of March 11, 1939, in *Car Over Cab Operations* (12 M. C. C. 127):

CAR OVER CAB OPERATIONS

EX PARTE NO. MC–4

IN THE MATTER OF QUALIFICATIONS OF EMPLOYEES AND SAFETY OF OPERATION AND EQUIPMENT OF COMMON AND CONTRACT CARRIERS BY MOTOR VEHICLE

Submitted July 7, 1938. Decided March 11, 1939

Upon further hearing the use of motor vehicles in the transportation of automobiles which are so constructed that all or part of one of the automobiles being transported protrudes over the cab of the carrying vehicle found not to be unsafe.

Sterling G. McNees, Bernard W. Butler, Leo Doucher, and *Carney D. Matheson, J. Ninian Beall, L. S. Harris, Robert E. Quirk*, and *Ewald E. Kundtz, Glenn W. Stephens, George Keitel, James D. McHugh*, and *Michael Donohue* for petitioner and interveners.

REPORT OF THE COMMISSION

DIVISION 5, COMMISSIONERS EASTMAN, LEE, AND ROGERS

BY DIVISION 5:

By order dated December 23, 1936, pursuant to the provisions of section 204 (a) (1) and (2) of the Motor Carrier Act, 1935, we prescribed rules and regulations governing the qualifications of drivers and the safety of operation of motor vehicles operated by common and contract carriers in interstate or foreign commerce. At the hearings which preceded the issuance of that order, no testimony was submitted concerning the safety of the type of motor vehicle used in trans-

porting new automobiles which is so constructed that one of the new automobiles being transported extends in whole or in part over the cab of the truck or tractor and for that reason this question was not then considered.

This proceeding involves the single issue of whether such type of motor vehicle used in transporting new automobiles in interstate or foreign commerce is safe.

On May 5, 1938, M. & G. Convoy, Incorporated, et al.,[1] hereinafter referred to as the petitioners, requested that "the proceeding in Ex Parte MC–4 be reopened for the purpose of investigation and for the issuing of rules and orders governing the safety of operation of vehicles transporting automobiles, all or part of one car of which protrudes over the cab." The petition set forth that section 1033 of the laws of the State of Pennsylvania (1937 P. L. 2329) reads in part as follows:

> (c) No person shall operate a vehicle on the highways of this commonwealth carrying any other vehicle, any part of which is above the cab of the carrier vehicle or over the head of the operator of such carrier vehicle.

The petition to reopen the proceeding was granted, by order entered June 17, 1938, and a hearing was set before an examiner. The hearing was held at Washington, D. C., July 6 and 7, 1938.

Highway transportation of new motor vehicles.—A large proportion of the motor vehicles manufactured in the United States is transported over the highways in interstate commerce from the factories or assembly plants to the distributors or dealers who sell them to the public. This transportation is performed by various methods, the chief of which are drive-away or "caravan" operations, in which the vehicle is driven under its own power to destination, sometimes also towing or carrying another vehicle, and truck-away opera-

[1] The petition was filed by M. & G. Convoy, Incorporated, Mauer & Myers Auto Convoy, and John G. Reeser, plaintiffs, and George M. Wenner, Square Deal Cartage Company, Sprecher Brothers, Martin L. Speck, Howard Sober, Incorporated, Paul W. Snyder, Leslie Reeser, Pontiac Auto Transport Company, Incorporated, H. H. Krout, Industrial Transport, Incorporated, Fleet Carrier Corporation, David E. Elster, Eastern Automobile Forwarding Company, Incorporated, E. & L. Transport Company, Central States Transit Lines, F. J. Boutell Driveaway Company, Tracy Baker Automobile Forwarding, Baker Driveaway Company, and Automobile Shippers, Incorporated, who as interveners joined in the petition with the plaintiffs.

tions, in which the new vehicles being transported are loaded upon a specially constructed vehicle or combination of vehicles and are carried as cargo. The latter vehicles are further classified by the industry into two types, "tudek" and "special." The "tudek" equipment, as the name indicates, consists of a truck-tractor and semitrailer with two cars mounted on the lower deck of the semitrailer, and two more mounted on the upper deck. No part of the cars protrudes over the cab of the truck-tractor.

The "special" equipment generally consists of a truck-tractor and semitrailer or truck and full trailer, usually carrying four new cars. In some instances, one of the cars is carried on the towing vehicle, mounted upon a steel structure over the cab, and in others a portion of one of the vehicles mounted on a steel structure on the towed vehicle projects over the cab of the towing vehicle, although none of the load rests on the towing vehicle. In the latter cases, the extent to which the car projects over the cab varies from only a few inches to several feet.

Of all the types of vehicle used in transporting new cars and trucks over the highway from factory or assembly plant as briefly described above, only the safety characteristics of that type of truck-away operation in which one of the vehicles being transported projects in whole or in part over the cab of the power unit are here under consideration.

At the hearing testimony and evidence were introduced by representatives of the petitioners, associations of affiliated transporters, manufacturers of equipment, insurance underwriters, and others who represented a large majority of carriers engaged in the truck-away operations.

It appears from the record that there are approximately 200 carriers engaged in truck-away and drive-away operations, of which about 50 are private carriers. All of the 150 common and contract carriers use the "special" equipment to greater or lesser extent. The total number of units (truck or tractor, plus full trailer or semitrailer) in use in truck-away operations by the 150 common and contract carriers was placed at 5,000 with an estimated cost of $3,500 per unit, or a total initial investment of $17,500,000.

All of the common and contract carriers engaged in this transportation are engaged in interstate commerce. One such

carrier who operates 64 units (44 "specials") of equipment out of Buffalo, N. Y., stated that approximately 50 percent of his transportation was interstate in character; another carrier operating 122 units (79 "special") out of Buffalo, N. Y., stated that 99 percent of his operations was interstate; another carrier operating 113 units (all "special") out of Flint, Mich., stated that 99 percent of his transportation was interstate; and another carrier operating 30 units (15 "special") out of Flint, Mich., stated that his operations were 100 percent interstate. No testimony was introduced to show that any such motor carrier was engaged exclusively in intrastate transportation of automobiles.

Technical considerations.—This investigation involves a study of the method of mounting vehicles upon the "special" equipment, and its effect upon safety of operation. One of the important elements is the structural adequacy of the supporting frames upon which such vehicles are to be mounted.

In the case of the foremost vehicle of the load being carried either on the towing vehicle or on the towed vehicle, it appears from the record that in most if not all instances the steel structure upon which such vehicle is secured constitutes an integral part of the carrying equipment. Full consideration is given by manufacturers of such equipment to the strength and rigidity of those structural parts. Further, the record shows that adequate means are provided in all instances to secure the vehicles being transported firmly in place by suitable stops and hold-down chains.

So far as the height of the "special" equipment and its load is concerned, it was shown that these were well within State limitations and in many instances were less than those of conventional van-body trucks. Bearing upon the tendency of the "special" equipment to overturn in rounding a curve, it was shown that the center of gravity of such equipment when loaded was comparable to, and in many cases lower than, that of loaded van-type trucks.

In addition to considerations of safety, the interest of the shipper (in this case the automobile manufacturer) in seeing that the cars arrive at destination without marring or other damage has prompted them in numerous instances to

have the loaded equipment inspected before transportation begins, in addition to such inspection as the carriers themselves may make.

The safety director for U. S. Trucking Lines, which is an owning and controlling management corporation of several motor carriers which operate in the Middle Atlantic States, submitted photographs which were taken by a commercial photographer from the cab of a "special" unit from an approximate position of the driver's eyes. These were submitted by this witness to show that the various types of traffic lights are clearly discernible without obstruction.

Three drivers of "special" equipment, with 8, 6, and 10 years of driving experience in truck-away operations, respectively, testified that the car-over-cab structure, with car in place, provided no obstacle to vision from the driver's seat. The driver having 10 years' experience testified that the shade provided by the overhead structure acted as a visor against the rays of the sun and thus facilitated safe driving. He also concluded that "special" equipment provided better traction in slippery weather and better braking.

Most of the evidence related to combinations of vehicles, either truck and full trailer, or truck-tractor and semitrailer. It is obvious, however, that the same considerations apply with equal force to a truck transporting motor vehicles as cargo.

Accident frequency.—Statistics were introduced at the hearing to show the accident-frequency rates of various types of commercial vehicles. It was shown from the National Safety Council's "Accident Facts," 1938 edition, that 49,952 trucks of all types which had traveled approximately 700,000,000 miles during 1936–37 had an accident frequency of 2.94 per 100,000 vehicle-miles. The accidents tabulated in "Accident Facts" were based upon the following definition of an accident adopted by the National Safety Council:

> A vehicular accident shall be any accident in which the vehicle is involved unless properly parked, where such accident results in death, personal injury, or property damage regardless of who is hurt, what property was damaged, or who was responsible.

All of the exhibits submitted at the hearing and hereinafter discussed were based on accidents as defined by the National Safety Council in the definition quoted above.

A composite exhibit was submitted by the witness Thompson, who is the safety director for the International Automobile Transporters Association. This exhibit, covering the period from January 1, 1937, to June 1, 1938, shows the accident frequency of 28 fleets, consisting of 346 "tudeks" and 218 "specials," traveling 12,325,310 and 11,452,816 miles, respectively. The accident frequency was 1.32 for "tudeks" and 1.15 for "specials," or 1.24 for all vehicles of all fleets.

Other witnesses submitted exhibits showing accident frequency. A recapitulation of the exhibits, except those submitted by the witness Thompson for the period from January 1, 1937, to June 1, 1938, shows that the accident frequency for "tudeks," which had traveled a distance of 21,783,334 miles and were involved in 373 accidents of all kinds, was 1.71. During the same period special units, which had traveled 23,064,753 miles and were involved in 307 accidents, had an accident frequency of 1.33. The combined operations of the "tudeks" and "specials" covered a distance of 44,848,087 miles and were involved in 680 accidents. The accident frequency of the entire number of vehicles was 1.52.

A break-down of the data shown on these various exhibits indicates that in the period from January 1, 1938, to June 1, 1938, the accident frequency of both "tudeks" and "specials" was less than the accident frequency during the calendar year 1937, as will be shown by the analysis now set forth.

An analysis shows that during 1937, 156 "tudeks" traveled a distance of 7,795,158 miles and were involved in 109 accidents. The accident frequency was 1.40. During 1937, 155 "special" units traveled a distance of 9,243,433 miles and were involved in 98 accidents. The accident frequency was 1.06. There were 311 fleet units, including both "tudeks" and "specials," which traveled a distance of 17,038,591 miles and were involved in 207 accidents. The accident frequency during the year 1937 was 1.21. Fleet operators who submitted the foregoing exhibits show that for the first six months of 1938, 121 "tudeks" traveled 2,684,370 miles and were involved in 36 accidents. The accident frequency was 1.34. There were 113 "special" units which traveled 2,316,875 miles and were involved in 20 accidents. The accident frequency was 0.86. The entire fleet, consisting of 234 units,

traveled 5,001,545 miles and was involved in 56 accidents. The accident frequency for this period of 1938 was 1.12 as compared to 1.21 for 1937.

The safety supervisor for five companies and the safety director for the National Automobile Transporters Association submitted other important testimony and comprehensive exhibits, tending to support the conclusion that transportation of automobiles by "special" equipment presents no special hazard and in fact enjoys a good safety record in comparison with other types of highway transport.

The superintendent of motor transportation of the Public Utilities Commission of the State of Ohio testified that, of the 235 reportable accidents in his State during the year 1936, only 6 were reported by motor carriers who operate the type of vehicles herein considered, and further that none of the six accidents "was chargeable to vehicular defects" or directly chargeable to this type of vehicle." Of the 262 accidents reported during 1937, only 5 were reported by motor carriers using this type of equipment. There was one accident in which the overhead structure of a "special" unit (unloaded at the time) contributed to the severity of the accident. This was the case of a rear-end collision with a school bus in which the overhead structure penetrated the rear of the bus. The cause of the accident, however, was not traceable to the type of construction of the "special" unit.

A sergeant of the Maryland State Police, whose duties include investigations of automobile accidents, submitting reports thereof, and making arrests for violation of the motor-vehicle laws, testified:

> I travel in the western section, which is particularly mountainous, and I see this type of vehicle every day, three or four different units. I have traveled behind them down the mountains and up the mountains, on dangerous curves, and hazardous parts of the road, and I have never come upon an accident involving any of them in the 12 years I have been with the department.

Conclusions.—The record discloses no testimony whatsoever to show that the operation of motor vehicles, used in transporting new automobiles, and which are so constructed that one of the automobiles being transported extends in whole or in part over the cab, is unsafe. On the contrary,

the evidence is clear that the average number of accidents in which vehicles of this type are involved is less than the country's average for all trucks. We find no reasons of record why the operations of such vehicles should be forbidden. The safety regulations heretofore prescribed by us, of course, apply to these as well as other vehicles operated by common and contract carriers in interstate or foreign commerce. The operations of vehicles so equipped are therefore permitted by the existing regulations, and there is no need for change.

As indicated in the foregoing discussion, the conclusions which we have reached on the evidence of record are not in harmony with a provision of the laws of the Commonwealth of Pennsylvania which prohibits the operation of vehicles of the type in question. The validity of this provision was sustained by a decision, rendered April 27, 1938, of a judge of the Dauphin county court of Pennsylvania. So far as we are informed, the laws of no other State contain a similar prohibition.

When this proceeding was instituted, we specially notified the authorities of the Commonwealth of Pennsylvania in order that they might have ample opportunity to take such part in the hearing as they deemed desirable. A representative of the Commonwealth appeared, but withdrew from the proceeding upon the ground that we were attempting "to pass the burden and expense of doing the investigation for the Commission upon the Commonwealth." No evidence was therefore submitted in behalf of the Commonwealth. Later, in a letter addressed to the Commission, the representative asked that the evidence be reviewed which was presented in the case referred to above before the Pennsylvania court. He was informed that this evidence could not, as a matter of law, be considered unless it were presented in our own proceeding, but that the Commission would, no doubt, be willing upon request to reopen the latter for this purpose. No such request was made.

Notice of the proceeding was given widely throughout the country prior to the hearing, and the recommended report of the examiner was given like publicity. We recognized that at the hearing the only evidence was introduced by or on

behalf of carriers engaged in the type of operation under investigation, and we agree without question that it is the duty of the Commission in such inquiry to see to it, so far as lies within its power, that the pertinent facts are adequately developed of record. With this end in view, we have had the record examined carefully by the technical men on our staff to determine whether or not it contains an adequate presentation of the facts. They think that it does.

While, as above indicated, we agree that the burden of obtaining an adequate record is upon us, nevertheless we feel that we have not had the cooperation in this matter from the Commonwealth of Pennsylvania which might reasonably have been expected and which we normally receive from State authorities, including those of Pennsylvania, with much public benefit. The Commonwealth is a sovereign State with ample resources and is concerned, equally with the Federal Government, with the public welfare. If it had available evidence in regard to this matter which it believed that it was important for us to consider, we can conceive of no good reason why the Commonwealth should not have cooperated to the extent of presenting such evidence.

In all the circumstances we believe that we should issue our report in this investigation upon the record before us without further delay, arriving at the conclusions which that record warrants. We shall, however, undertake to keep informed as to the operations of the vehicles in question and their performance from the point of view of the public safety, and if it should at any time appear that there is reason to believe that our present conclusions were not justified, the proceeding will be reopened at once for further hearing.

COMMISSIONER LEE dissents.

U. S. GOVERNMENT PRINTING OFFICE: 1940

P. 9.

SUPREME COURT OF THE UNITED STATES.

No. 380.—October Term, 1939.

Alfred A. Maurer and Marcus W. Myers, trading as Maurer & Myers Auto Convoy, Appellants, vs. William J. Hamilton, Jr., Secretary of Revenue of the Commonwealth of Pennsylvania, et al.	Appeal from the Supreme Court of the Commonwealth of Pennsylvania.

[April 22, 1940.]

Mr. Justice Stone delivered the opinion of the Court.

The question for decision is whether a statute of Pennsylvania prohibiting the operation over its highways of any motor vehicle carrying any other vehicle over the head of the operator of such carrier vehicle, is superseded by the rules and regulations promulgated by the Interstate Commerce Commission under the Motor Carrier Act of 1935, 49 Stat. 543, 49 U. S. C. §§ 301-327, applicable to common and contract carriers in interstate commerce.

Appellants, co-partners engaged as common carriers in the business of transporting in interstate commerce new automobiles upon motor trucks specially constructed for that purpose, brought this suit in the Pennsylvania state courts to enjoin appellees, state officers, from enforcing against appellants § 1033(c) of the Pennsylvania Vehicle Code, effective June 29, 1937, 75 P. S. 642, which prohibits the operation on the highways of the state of any vehicle carrying any other vehicle "above the cab of the carrier vehicle or over the head of the operator of such carrier vehicle."[1] Two other like suits brought by motor carriers engaged in like transportation interstate were consolidated with the present suit.

[1] "(c) No person shall operate a vehicle on the highways of this Commonwealth carrying any other vehicle, any part of which is above the cab of the carrier vehicle or over the head of the operator of such carrier vehicle."

After the argument of the appeal in this case, but before the decree in the State Supreme Court, this section was amended to read:

"(c). No person shall operate a vehicle on the highways of this Commonwealth carrying any other vehicle, the weight of which is directly above the

After a hearing in which there was extensive evidence tending to show that the transportation by appellants over the state highways of cars placed above the cab of the transporting vehicle is unsafe to the driver and to the public, the trial court found that the location of motor vehicles over the cab of the carrier rendered its operation dangerous on the curves and grades of the Pennsylvania highways. It found that such location of the carried car above the driver raises the center of gravity of the loaded car above that which is normal in trucking operations, places excessive weight on the front axles and tires, obscures the vision of the driver of the carrier car, with the results that it increases the difficulty of steering the loaded car, adversely affects braking, particularly on curves, and affects the balance of the loaded car so as to make its use on the highways dangerous.

It also found that in case of collision or loss of control the overhead car has a tendency to fly off the cab, in consequence of which, in numerous cases, serious injury had resulted to the operator of the truck or to the colliding car and its occupants, or both, and that the height of the overhead car and its interference with the driver's vision causes him to drive on the wrong side of the road in order to avoid overhead obstructions. The court concluded that the state statute was a safety regulation of motorcars using the highways of the state and that, as applied to appellants, it infringed neither the commerce clause of the Federal Constitution nor the due process clause of the Fourteenth Amendment, and gave judgment dismissing the complaint. On appeal the Supreme Court of Pennsylvania confirmed the findings of the trial court and affirmed the decree. 336 Pa. 17. The case comes here on appeal under Section 237 of the Judicial Code, as amended, 28 U. S. C. § 344.

Before the present suit was brought, the Interstate Commerce Commission, purporting to act under the Motor Carrier Act, had promulgated regulations effective July 1, 1936, with re-

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cab of the carrier vehicle or directly over the head of the operator of such carrier vehicle." Act No. 400 of June 27, 1939.

The Supreme Court of Pennsylvania, in its opinion, considered this amendment and concluded that the statute both before and after the amendment applied to the vehicles used by appellants and was directed at the same evils, and that no essential change was made by the amendment, a construction which we adopt. The Supreme Court also concluded that as the amendment named no date when it was to take effect it would become effective some two months later, on September 1, 1939, as provided by § 4 of the Statutory Construction Act of May 28, 1937, P. L. 1019, 1020.

spect to "safety of operation and equipment" of common and contract motor carriers in interstate commerce, subject to the Act. These regulations contained no provisions specifically applicable to cars carried over the cab of the carrier vehicle. On March 11, 1939, while the present cause was pending before the Supreme Court of Pennsylvania, the Interstate Commerce Commission, in "Car Over Cab Operations", 12 M. C. C. 127, issued its report of an investigation of the practice of the car over cab method of transportation of motor vehicles, in which it announced its conclusion that

"The record discloses no testimony whatsoever to show that the operation of motor vehicles, used in transporting new automobiles, and which are so constructed that one of the automobiles being transported extends in whole or in part over the cab, is unsafe. On the contrary, the evidence is clear that the average number of accidents in which vehicles of this type are involved is less than the country's average for all trucks. We find no reasons of record why the operations of such vehicles should be forbidden. The safety regulations heretofore prescribed by us, of course, apply to these as well as other vehicles operated by common and contract carriers in interstate or foreign commerce. The operations of vehicles so equipped are therefore permited by the existing regulations, and there is no need for change." (p. 132.)[2]

The Supreme Court of Pennsylvania took judicial notice of this action of the Commission, but concluded that the authority of the state to enact § 1033(c) of the Vehicle Code was unimpaired by federal action under the commerce clause for the reason that the applicable provisions of the Motor Carrier Act, enacted by Congress, did not purport to withdraw from the state its constitutional power to make the regulation embodied in that section,

[2] The report of the Interstate Commerce Commission states, page 133, that in this proceeding "the only evidence was introduced by or on behalf of carriers engaged in the type of operation under investigation", that the State of Pennsylvania declined to participate in the proceeding and that a representative of the state invited the attention of the Commission to the evidence which had been taken in the present suit, but that such evidence was not made a part of the record in the proceeding before the Commission and was not considered by it. The Commission, so far as the report discloses, gave no consideration to the consequences of placing the carried car above the cab of the motor carrier when accidents do in fact occur, to the effect of the weight distribution of the combination when used on highways of grades and curves over which petitioners operate in Pennsylvania, and its tendency to cause the driver of the combination to hold to the middle of the road to avoid injury to the carrier car on the tree-lined highways of the state, all of which were deemed by the state courts in the present case to have an important bearing on safety.

and for a second reason, which we find it unnecessary to consider, that in any case the action of the Commission in declining to adopt any rule or regulation with respect to the car over cab practice of interstate common and contract motor carriers could not be taken as a mandate to such cariers to continue the practice despite state regulation prohibiting it.

Appellants assail the state statute on the grounds that even though it is unaffected by the provisions of the Motor Carrier Act it nevertheless infringes the commerce clause and the due process clause of the Fourteenth Amendment and that in any case the statute is superseded by the action taken by the Commission in conformity to the Motor Carrier Act.

Only a word need be said of the constitutional objections. The present record lays a firm foundation for the exercise of state regulatory power, unless the state has been deprived of that power by Congressional action authorizing the Commission to substitute its judgment for that of the state legislature as to the need and propriety of the state regulation. The nature and extent of the state power, in the absence of Congressional action, to regulate the use of its highways by vehicles engaged in interstate commerce has so recently been considered by this Court that it is unnecessary to review the authorities now, or to restate the standards which define the state power to prescribe regulations adapted to promote safety upon its highways and to insure their conservation and convenient use by the public. See *South Carolina Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177. Judged by these standards we can find no basis for saying that the Pennsylvania statute is not such a regulation or that it is a denial of due process or that it infringes the commerce clause if Congress has not authorized the Interstate Commerce Commission to promulgate a conflicting rule.

This brings us to the more serious question whether Congress, by the enactment of the Motor Carrier Act of 1935, as a regulation of interstate commerce, has undertaken to deprive the state of the power to impose the present regulation upon vehicles moving in interstate commerce. With the adoption of the Motor Carrier Act, the national government embarked on the regulation of a type of interstate traffic, many of whose regulatory problems bear little resemblance to those of other systems of transportation which had previously been subjected to Congressional control. They presented difficulties and complexities differing from and far exceeding those of

any earlier regulations of interstate commerce. Our most extensive experience had been in the national regulation of rail carriers, operating over roads and with rolling stock privately owned and controlled; with standards of roadbed, operation and equipment, substantially uniform throughout the country, and with the movement of traffic on each road subject to a single unified control.

Regulation of vehicular traffic over the highways of the United States involves a far more varied and complex undertaking. The highways of the country have been built by the states with substantial financial aid from the federal government in the construction of some of them.[3] They are state owned, and, in general, are open in each state to use by privately owned and controlled motor vehicles of widely different character as respects weight, size, and equipment.[4] The width, grades, curves, weight-bearing capacity, surfacing and overhead obstructions of the highways differ widely in the forty-eight different states and in different sections of each state. There are like variations with respect to congestion of traffic. State regulation, developed over a period of years, has been directed to the safe and convenient use of the highways and their conservation with reference to varying local needs and conditions.

Assumption of national control involved problems of peculiar difficulty and delicacy. Apart from regulations of interstate motor traffic having commercial aims and involving routes, schedules, rates and the like, any regulation on a national scale, whatever its extent, has an intimate and vital relation to the conservation of highways which belong to the states, and to their safe and convenient use by the general public in both interstate and intrastate traffic. Our entire experience with the growth of automobile traffic and its regulation by the states teaches that in any form of non-commercial regulation, safety is a dominant consideration. Motor vehicles are dangerous machines whose operation is attended by serious hazard to persons and property. *Hess* v. *Pawloski*, 274 U. S. 352, 356. In

[3] For the significance of federal aid, see hearings before Senate Committee on Interstate Commerce on S. 2793, 72d Cong., 1st Sess. (1932), p. 217. See also Nashville, C. & St. L. Ry. *v.* Walters, 294 U. S. 405, 417.

[4] It is estimated that 85 per cent. of all trucks are privately owned and operated, and that over 200,000 separate trucks would be subject to the federal regulation. See Hearings before Senate Committee on Interstate Commerce on S. 2793, 72d Cong., 1st Sess., p. 223; S. Doc. 152, 73d Cong., 2d Sess., p. 28 (1934); Hearings before House Committee on Interstate and Foreign Commerce on H. R. 5262, 74th Cong., 1st Sess. (1935), p. 156, *et seq.*

1934, the year before the enactment of the Motor Carrier Act, there were 36,000 reported deaths from motorcar accidents in the United States.[5] Excessive speed, defective appliances, negligent driving, size, weight and loading of cars in conjunction with local conditions of traffic and of the highways, contributed in varying degrees to this record of disaster.

It is in the light of this history and background that we must appraise and apply the provisions of the Motor Carrier Act of 1935. The declared policy of the Act, § 202(a), is to preserve and foster the economic and commercial advantages of an efficient transportation system. The power to regulate, which it confers on the Interstate Commerce Commission, extends in some measure to safety regulations. Section 204(a) provides:

"It shall be the duty of the Commission—(1) to regulate common carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express, uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment."

Subdivision (2) imposes a like duty upon the Commission to regulate "contract carriers." Subdivision (3) imposes the duty

"To establish for private carriers of property by motor vehicle, if need therefor is found, reasonable requirements to pomote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and standards of equipment."

Section 225 provides:

"The Commission is hereby authorized to investigate and report on the need for Federal regulation of the sizes and weight of motor vehicles and combinations of motor vehicles and of the qualifications and maximum hours of service of employees of all motor carriers and private carriers of property by motor vehicle. . . ."

The words of this section indicate, as its history demonstrates, that it was intended to reserve from the regulatory power of the Commission the regulation of "sizes and weight of motor vehicles." Unlike § 204(a)(3), which makes it the duty of the Commission "if need therefor is found" to establish reasonable requirements to promote safety of operation and to prescribe standards of equipment for "private carriers of property", § 225 imposes no duty and confers no authority on the Commission to regulate the sizes and

[5] Accident Facts (1936) published by National Safety Council, Inc.

weights of motor vehicles.[6] Its authority is limited to investigation and report of the need of such regulation.[7]

The bill containing the provisions of §§ 204 and 225 which we have quoted, was prepared by the Federal Coordinator of Transportation and its adoption was recommended in his 1934 report to the Interstate Commerce Commission, which transmitted the report and proposed bill to the Senate with its favorable recommendation. Sen. Doc. No. 152, 73rd Cong., 2d Sess. The report made no mention of the scope, purpose or meaning of § 225, other than the statement, p. 49, that it provides for "investigation and report to Congress of the need, if any, for federal regulation of the sizes and weights of motor vehicles." The report referred, page 32, to the facts that the states regulate extensively the length, width, height and speed of motor vehicles, and their maximum gross weights and require that they "be equipped with a variety of safety appliances"; that these regulations "are designed in part to protect the safety and convenience of the public in its use of the highways and in part to protect the highways from excessive wear and tear", and that the "requirements as to gross weights, lengths, and widths of vehicles are often grounded in State policies with respect to the design of highways", with respect to their weight sustaining capacity and their curves. In testifying at the hearings upon the bill before the Senate Committee on Interstate Commerce, the Coordinator explained the provisions of § 225 by stating:

"with respect to size and weight of vehicles . . . we do not undertake in this bill to cover that situation except to provide for a thorough investigation of it by the Commission with recommenda-

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[6] Cf. Coordination of Motor Transportation, 182 I. C. C. 263, 387, Recommendation 11.

[7] On November 8, 1937, the Commissioner ordered an Investigation

"IN THE MATTER OF REGULATIONS GOVERNING THE SIZES AND WEIGHT OF MOTOR VEHICLES AND COMBINATION OF MOTOR VEHICLES USED BY COMMON AND CONTRACT CARRIERS . . . AND PRIVATE CARRIERS. . . .

"1. To enable the Commission to make a report under the provisions of section 225 on the need for Federal regulation of the sizes and weight of motor vehicles and combinations thereof.

"2. To enable the Commission to prescribe reasonable requirements under the provisions of section 204 of the act as to the sizes and weight of motor vehicles and combinations therefor insofar as they affect the safety of operation."

The Commission is now engaged in making its investigation and has made no report of its findings or conclusions. Report No. 1, a preliminary study as yet unpublished (April, 1940), made by the Bureau of Motor Carriers, Interstate Commerce Commission, is devoted to an analysis of state limitations of sizes and weights of motor vehicles.

tions to Congress because there is involved not only a question of fact as to what the regulation should be, but also as to how far the federal government has power to interfere with the exercise of the police power of the states with respect to the use of their highways. They have the right to protect their highways against unsafe or unreasonable use, but whether or not the federal government can come in and interfere with it I cannot say at this time." Hearings before Senate Committee on Interstate Commerce on S. 1629, 74th Cong., 1st Sess., (1935) p. 32.[8]

Again, page 61, he referred to "sizes and weights" as "an extremely important matter from the standpoint of public safety and convenience". This Court has also had occasion to point out that the sizes and weights of automobiles have an important relation to the safe and convenient use of the highways, which are matters of state control. *Sproles* v. *Binford*, 286 U. S. 374; *South Carolina Highway Dept.* v. *Barnwell Bros.*, *supra*. It is evident that the purport of § 225 is to reserve "sizes and weight" from the regulatory powers of the Commission, quite as much when related to safety as when related to highway construction, pending investigation and report by the Commission of the need for such regulation, and further consideration of the matter by Congress. Such has been the uniform construction of § 225 by courts having occasion to consider the subject.[9]

On the argument before us it was conceded that the "size and weight of motor vehicles", of which § 225 speaks, must be taken to

[8] On page 61 of the Report the Coordinator stated: "But on this question of sizes and weight of motor vehicles which is an extremely important matter from the standpoint of public safety and convenience, there is not only the question here as to what those sizes and weights ought to be from the standpoint of road construction and road use, but there is also the legal question as to whether the federal government can exercise power over the matter or whether it is a matter exclusively within the jurisdiction of the states. It was because of doubts not only as to the facts with reference to that matter, but also to the law that provisions were made for this investigation."

The Committee Reports make no comment on Section 225. See S. Rept. No. 482, 74th Cong., 1st Sess.; H. Rept. No. 1645, 74th Cong., 1st Sess.

[9] L. & L. Freight Lines v. Railroad Commission, 17 F. Supp. 13 (1936); Barnwell Bros. v. South Carolina State Highway Department, 17 F. Supp. 803 (1937); Werner Transportation Co. v. Hughes, 19 F. Supp. 425 (1937); Houston & North Texas Freight Lines v. Phares, 19 F. Supp. 420 (1937); Morrison v. State, 133 Tex. Cr. App. 141, 109 S. W. (2d) 205 (1937); Yellow Cab Transit Co., Inc. v. Tuck, 115 S. W. (2d) 455 (Tex. Civ. App. 1938); cf. H. P. Welch Co. v. New Hampshire, 306 U. S. 79 (1939).

Upon the appeal in South Carolina Highway Dept. v. Barnwell Bros., *supra*, to the Supreme Court, respondents abandoned their contention in the trial court that power to regulate the loaded weight and size of motor vehicles had not been withheld from the Commission by § 225. 303 U. S. 177.

include the sizes and weights of motor vehicles and their loads. This is evident both because an investigation of sizes and weights of motor vehicles, apart from their load, would be useless so far as the major problems of safety and use of the highways are concerned and because, as presently will appear, the state regulation of sizes and weights to be investigated has from the beginning included sizes and weights of the loaded vehicle. The power of the states to regulate the sizes and weights of loaded motor vehicles was thus left undisturbed. Such other courts as have had occasion to consider the matter in the cases already noted have arrived at the same conclusion.[10]

But the question remains whether the Pennsylvania statute is a regulation of "sizes and weight" within the meaning of § 225, or whether it is a regulation of "safety and operation and equipment", which the Commission was authorized to make by § 204(1)(2). Perusal of the present record can leave no doubt that in both a technical and a practical sense § 1033(c) is a regulation of weight and size of the loaded motor vehicle, and that the Pennsylvania Legislature intended it to be such.[11] By providing that the carried car shall not be loaded above the cab, the statute sets practical limits to the height of the loaded car and precludes its projection beyond the cab of the carrier car and into the line of vision of its driver. It is also a restriction on weight distribution of the loaded car and in its amended form specifically prohibits placing the "weight" of the carried car above the driver.[12] The highest court of the state has declared that such are the purposes of subsection (c), in order to avoid the safety hazards resulting from improper weight distribution and the height of the carried car at a point where it cannot be observed by the driver. As interpreted and applied by the state court, we can not regard the regulation as other than an exercise of the state's power to protect the safe and convenient use of its high-

[10] See note 9, *supra*.

[11] In addition to subsection (c), of § 1033, which in its amended form is specifically directed to the location of the "weight" of the carried car, the section contains three other subdivisions which affect size and weight distribution of the loaded vehicle. Subsection (a) prohibits the operation of vehicles "having two levels for the carriage of other vehicles". Subdivision (b) prohibits operation of vehicles carrying other vehicles any part of which is more than 115 inches from the ground; and subdivision (d) prohibits the operation of vehicles carrying any other vehicle "any axle of which is more than 4 feet higher than any other axle on such carrying vehicle". Subsections (a), (b) and (d) do not become effective until January 1, 1942. West Virginia has a statute containing similar provisions. Ch. 88, Acts of W. Va., 1939.

[12] See note 4, *supra*.

ways through the control of size and weight of motor vehicles passing over them, which it was the purpose of § 225 to reserve to the state from the grant of regulatory power to the Commission. Being thus reserved we think it is unaffected by the authority conferred on the Commission by § 204 to regulate "safety of operation and equipment".

The Commission in its report in "Car Over Cab Operations", *supra*, gave no consideration to the extent of its authority under § 204, to make safety regulations affecting the car over cab practice or to the question whether the Pennsylvania restriction is in fact and in practical operation a weight and size regulation, or whether the authority to make such regulations is reserved to the states by § 225. The power of the Commission to regulate with respect to safety in the case of common and contract carriers is defined by § 204(a)(1) and (2), which makes it the duty of the Commission to regulate "safety of operation and equipment."[12] In the exercise of this authority the Commission has made no regulation concerning sizes and weight of motor vehicles or their loads. But in a brief filed in this cause it contends that the Pennsylvania statute is an infringement of the Commission's authority to regulate safety of equipment. In ordinary speech the load of a vehicle is not spoken of as a part of its equipment. In the Motor Carrier Safety Regulations, promulgated by the Commission, safety of equipment is treated as synonymous with or the equivalent of parts and accessories of motor cars affecting safety. The Uniform Act regulating motor car traffic on highways, which was recommended by the National Conference of State and Highway Safety in 1930 and 1934, which was referred to in the report of the Coordinator, placed all size and weight regulations in a single "Article XVI, Size, Weight and Load", separate from the articles containing provisions relating to the speed, driving and movement of motor cars and from "Article XV, Equipment", which was confined to automobile parts and accessories and their inspection.[13]

But even though the phrase "operation and equipment" of motor cars could be taken, when standing alone, as including the weight and size of their loads, we think it plain that it cannot be so taken when read in conjunction with the reservation in §225 of "sizes and

[13] See Uniform Act Regulating Traffic on Highways, IV, National Conference on Street and Highway Safety (1930), 38, 49; Uniform Act Regulating Traffic on Highways, V, Bureau of Public Roads, United States Department of Agriculture (1934), 23, 35.

weights" from the regulatory power of the Commission. As the report of the Coordinator and the legislation in the several states shows, and as this Court has recognized, see *Sproles* v. *Binford, supra; South Carolina State Highway Dept.* v. *Barnwell Bros., supra,* the sizes and weights of motor vehicles and their loads present safety problems which are special and distinct from those involved in the driving and movement of cars ordinarily known as their operation, and from their parts and accessories ordinarily referred to as motor car equipment. As we have seen, one of the purposes of the reservation made in § 225 was to give opportunity for further study and consideration by the Commission of the relation of sizes and weights of motor cars to the public safety and convenience, as well as to road construction and use so that the Commission and Congress might be advised what the regulation of these safety factors should be and how far Congress should interfere with their regulation by the states.

The Couzens bill, S. 2793, § 2(a)(1)(2), 72d Cong., 1st Sess., discussed in the 1934 report of the Coordinator, authorized the Commission to prescribe reasonable requirements with respect to "safety of operation and equipment (including the weight, length, width and height of motor vehicles used by such carriers)". This proposal was not adopted and in the bill recommended by the Coordinator and the Commission in 1934 and enacted as the Motor Carrier Act of 1935, the parenthetical clause in the provision authorizing regulation of safety of operation and equipment as it appeared in the Couzens bill, was transferred to § 225, where it appeared as "sizes and weight of motor vehicles", federal regulation of which was reserved to await the future action of Congress. The clause which was thus resorted to in the earlier bill to include regulations of sizes and weight in the authority to regulate "safety of operation and equipment" was by its transfer to § 225 of the Act of 1935 similarly made the means of withholding from the regulatory power of the Commission regulations of sizes and weight affecting safety.

As a matter of statutory construction Congressional intention to displace local laws in the exercise of its commerce power is not, in general, to be inferred unless clearly indicated by those considerations which are persuasive of the statutory purpose. This is especially the case when public safety and health are concerned. *Kelly* v. *Washington,* 302 U. S. 1, 10-14; *H. P. Welch Co.* v. *New*

Hampshire, 306 U. S. 79, 85 and cases cited. There are other cogent reasons why the reservation made by §225 cannot be given a narrow construction. The hesitancy manifested by Congress, until the adoption of the 1935 Act, to interfere with the state highway regulations and its failure then to follow earlier and more far reaching proposals are persuasive against such a construction.[14] A thorough investigation by the Commission which the statute authorized was necessary not only to determine the importance of sizes and weight "from the standpoint of public safety and convenience", but also to resolve the uncertainty of the draftsmen of the bill and presumably of Congress "as to the facts with reference to the matter" and "as to what the regulation should be". S. Doc. No. 152, 73rd Cong., 2d Sess., p. 61. The extent to which Congress should, if at all, curtail state regulation, could be determined only when those doubts were resolved.

A considerable period of time was required for preparation for the investigation and for bringing it to a conclusion. The investigation which was authorized in November 1937, Ex parte No. M.C. 15, has not yet proceeded beyond the preliminary stage of gathering information. It could not be assumed that in the meantime a rapidly changing industry would not produce new types of vehicles involving new problems of the relation of sizes and weight to safety such as are involved in the present case. A construction of the reservation made in § 225 is not to be favored which would deprive the states of authority to make safety regulations of sizes and weight before Congress was informed by a full investigation and report of the Commission of the nature of the regulations, both those in force and those which are needed, and whether in the light of the competing demands for national uniformity and for accommodation to local conditions, regulation of sizes and weight can be

[14] Prior to the 70th Congress, the bills for federal regulation contained no provisions of any kind relating to size and weight. Beginning with the 70th Congress the bills almost uniformly provided that interstate carriers should remain subject to state regulations relating "to the maintenance, protection, safety, or use of the highways therein, which do not discriminate against motor vehicles used in interstate commerce". The Rayburn bill which the Interstate Commerce Commission approved, contained such a clause (S. Doc. 152, 73d Cong., 2nd Sess., 25). Only the Couzens bill (S. 2793, 72d Cong., 1st Sess.) affirmatively prescribed federal regulation. The Dill bill (S. 3171, 73d Cong., 2d Sess.) and S. 1629, 74th Cong., 1st Sess., which was finally enacted as the Motor Carrier Act, envisaged the possibility of such regulation of size and weight, but only after a report to Congress. For a discussion of these bills see Kauper, Federal Regulation of Motor Carriers, 33 Mich. L. Rev. 239, 240-243, notes 128, 129, 132.

best prescribed by the Commission, by the state legislatures, or by a divided authority. For these reasons we think that the reservation of state power by § 225 is not restricted to the particular problems of weight and size which the traffic had developed at the moment when the act was passed, or which were then known to the Commission, in advance of the investigation which was to ascertain the facts, what the regulation should be and how far regulations of sizes and weights should be withdrawn from the states.

Sizes and weights which affect safety, not excluding consideration of local conditions, as well as those which affect wear and tear of the highways were to be the subject of investigation, and it is the subject of investigation which defines the reservation from the Commission's authority to regulate. Hence the phrase "sizes and weight" in § 225, when safety in concerned, is not to be narrowly limited to the overall length, width and height of the loaded cars and to their gross weight. For as we have seen distribution of weight and dimensions of load or particular parts of it in connection with local conditions of curves, grades and overhead obstruction of the highways, have an important relation to safety. In the light of the investigation Congress might conclude that the regulation of gross weights and dimensions concededly left to the States, could not be conveniently or wisely separated from regulation of weight distribution and particular dimensions.

It is true that the report of the Coordinator presenting the bill for Congressional action particularized gross weight and overall dimensions as a common subject of regulation by the states and as a reason for making the investigation. But we find nothing in the report, or in his testimony before the Senate Committee, or elsewhere in the legislative history, to show that it was intended by § 225 to confine state power to regulation of sizes and weights of automobiles and their loads to gross weights and overall dimensions. The bill as proposed and as enacted did not specify any such limitation of "sizes and weight", and it was well known that state size and weight regulations then in force or proposed were not so restricted.

Schedule B of the 1934 report of the Coordinator disclosed, page 213, that state regulation was then concerned with distribution of load weight by axle and wheel weight requirements. The weight provisions of the Uniform Act proposed by the National Conference on State and Highway Safety in 1930 and 1934, contained gross

weight limitations and axle weight limitations which involved distribution of weight of the loaded car. The preliminary report (No. 1) of the Interstate Commerce Commission, Bureau of Motor Carriers of April, 1940, p. 71, notes various state regulations fixing axle weight or wheel weight limitations, sometimes with and sometimes without a gross weight limitation, and states that the combination of these factors "is basically intended to control not only total gross weight of the vehicle and its load but also distribution of the load on the vehicle."

The proposed Uniform Act also contained provisions, in "Article XVI, Size, Weight and Load" (§ 78(e) of the 1930 Draft; § 142(d) of the 1934 Draft), for the distribution or location of load and its particular dimensions, independently of gross weight and overall measurements. They directed that "the load upon any vehicle . . . shall not extend more than three feet beyond the front wheels of such vehicle or the front bumper of such vehicle if it is equipped with such a bumper." Report No. 1 of the Commission indicates that this provision has been adopted in twenty-three states and that three states prohibit any such projection of load. As already noted, the present Pennsylvania statute regulating car over cab operation has been enacted in substance in West Virginia.[15]

Reading the words of § 225 in the light of its legislative history, and mindful of the peculiar conditions of the traffic and the problems of state regulation to which the section must be applied, and of its obvious purpose to postpone until the report of the Commission's determination of the extent to which Congress should withdraw from the states their power to regulate sizes and weight of motor vehicles, we cannot say that the phrase as used in the statute is restricted to overall measurements or gross weight, or that it does not include particular dimensions of motor vehicles and their loads and the distribution of load, which affect safety as well as the wear and tear of the highways. We conclude that the Pennsylvania statute now before us is a weight and size regulation within the meaning of § 225, and is within the regulatory authority of the state reserved by that section from the authority granted to the Commission by § 204.

Affirmed.

[15] See note 11, *supra*.